TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 284

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER,

—*vs.*—

NATIONAL LABOR RELATIONS BOARD, et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 1, 1960

CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 284

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER,

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NATIONAL LABOR RELATIONS BOARD, et al.

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[fol. A] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15038

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 15079

NATIONAL LABOR RELATIONS BOARD, Petitioner,

—v.—

BERNHARD-ALTMANN TEXAS CORPORATION, Respondent.

ON PETITION TO REVIEW AND SET ASIDE AND FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Joint Appendix—Filed October 29, 1959

[fol. 7]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Cases No. 39-CA-691
39-CA-729
39-CA-736
39-CA-737
39-CA-738

BERNHARD-ALTMANN TEXAS CORPORATION

and

LOYCE LOVELL, JOHN S. TORRES, JULIA C. CONTRERAS, IRENE PEREZ, MINNIE ESCAMILLA

and

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, Party to the Contract.

Cases No. 39-CB-191
39-CB-213
39-CB-219
39-CB-220
39-CB-221
39-CB-222

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

and

LOYCE LOVELL, JOHN S. TORRES, IRENE PEREZ, MINNIE ESCAMILLA, JULIA C. CONTRERAS, NINFA M. ESCAMILLA

and

BERNHARD-ALTMANN TEXAS CORPORATION, Party to the Contract.

On July 29, 1958, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had not engaged in and were not engaging in the unfair labor practices alleged in the complaints and recommending that the complaints be dismissed in their entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; the Respondent Union filed a brief in support of the Intermediate Report.[1]

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and finds merit in the General Counsel's exceptions. Accordingly, the Board adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

The Trial Examiner concluded that the Respondent Company had not violated Sections 8(a)(2) and 8(a)(1) of the Act by executing and maintaining a collective bargaining agreement with the Respondent Union. The Trial Examiner further concluded that the Union had not violated Section 8(b)(1)(A) by executing and maintaining the above agreement. For the reasons stated below, we disagree.

[fol. 9] 1. The Union had been attempting with only partial success to organize the Company's employees at its San Antonio, Texas, plant, since about October 1956. On July 29, 1957, certain of the employees struck in protest against a wage reduction. The Union continued its organizational efforts during the strike, and the Company continued to operate the plant. On August 30, 1957, following negotiations at its main office in New York City, the Company acceded to the Union's claim of majority status and the two parties entered into a "memorandum of understanding"

[1] Except for filing an answer, the Respondent Company did not enter an appearance in this case.

whereby the Company recognized the Union as the exclusive bargaining representative of its "production and shipping employees." This memorandum also provided for, *inter alia*, immediate cessation of the strike, a wage increase, institution of a check-off system for union dues, seniority, arbitration, a no-strike clause, duration, and the drafting of a formal agreement within a specified period. The Employer did not request a check of the authorization cards in the Union's possession, nor did the Union volunteer such cards for a check.[2]

On October 10, 1957, the parties entered into a formal collective bargaining agreement which embodied the terms of the "memorandum of understanding." In this agreement, the unit for which the Union was recognized as exclusive bargaining representative was spelled out as follows: "all non-supervisory production and shipping department workers * * *, excluding among others mechanics, [fol. 10] machinists, designers, sample department employees, cafeteria employees, time study employees, plant clericals, guards, watchmen, truck drivers, engineers, maintenance men, and janitors." This unit description, except for its specificity as to exclusions, conforms to the unit description of the "memorandum of understanding." Neither the earlier memorandum nor the formal collective bargaining agreement contained a union security clause.

In concluding that the General Counsel had failed to sustain the allegations of the complaint, the Trial Examiner relies on the following: (a) the General Counsel's alleged failure to prove a legally appropriate unit; (b) the General Counsel's alleged failure to prove that the Union lacked majority status on August 30, 1957, the date when the "memorandum of understanding" was signed; and (c) even if the Union did not enjoy majority status on the critical date, both the Union and the Company entertained a good faith belief as to the Union's majority status. For the reasons set forth below, we do not agree with the Trial Examiner.

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[2] The testimony on this point was undisputed. The Union's Regional Director testified that the authorization cards were turned over to the Union's attorney during the negotiations. However, there is no evidence that any sort of card check was ever made.

(a) As stated, the Union contends that the General Counsel must allege and prove that the unit covered by the "memorandum of agreement" is appropriate. We find no merit in this contention. This is not a "refusal to bargain" case. The Respondent Company is charged with having unlawfully contributed support to the Respondent Union by according it recognition as the exclusive bargaining representative of an agreed upon group of employees, although it had no right to act as such representative. The vice of [fol. 11] such action is the extension of recognition.[3] The assistance is not rendered any the less potent and unlawful by the fact that in a "refusal to bargain" case the Board might not find the agreed upon unit appropriate.[4]

(b) On August 30, 1957, the Union held authorization cards from 158 of the Company's employees. On this date, 357 employees were working at the plant, 71 of whom the parties have agreed to exclude from the unit. To the resulting sum of 286 employees, the General Counsel seeks to add 120 employees who worked just before the strike began on July 29, 1957, but who were not working on the critical date. Although the Company's plant manager testified that none of these 120 employees had been terminated and that they were still considered to be employees on the critical date, the Union contends that the General Counsel has failed to prove that they belong in the contract unit. The Trial Examiner did not make a definitive finding as to whether these employees should be included in the unit and we find it unnecessary to do so, for the following reason: Of these 120 employees, 88 had signed Union authorization cards prior to August 30, 1957, and are included in the Union's showing of 158. The Union is, therefore, seeking to

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[3] See *R. B. Wyatt Manufacturing Co., Inc.*, 117 NLRB 700, 705; *International Metal Products Company*, 104 NLRB 1076, 1077.

[4] Actually, the unit set forth in the contract appears to be appropriate under usual Board standards. In the clothing industry, the Board has found units of production and shipping employees appropriate. *Governdale & Drew, Inc.*, 106 NLRB 1317; *K W B Manufacturing Company*, 106 NLRB 1305. Further, in the absence of any violation of law or policy, the Board customarily finds stipulated or agreed upon units appropriate. See *The Eavey Company*, 115 NLRB 1779, 1780.

count these 88 cards as part of the 158 it held on the critical date while seeking to exclude these 88 employees [fol. 12] along with the rest of the 120, from the unit. These inconsistent positions clearly cannot prevail. Viewing this in the light most favorable to the Union, either 88 cards must be subtracted from the 158, leaving its representative status on the critical date as 70/280,[5] or at least 88 employees must be added to the 286, resulting in a figure of 158/368.[6] Accordingly, the Union could not, under any circumstances, have represented a majority of the employees involved on August 30, 1957. We find, therefore, that the General Counsel has sustained his burden of showing the Union's lack of majority status on the critical date.

(c) The Union contends, and the Trial Examiner appears to agree, that the good-faith belief of both the Company and the Union as to the latter's majority status on August 30 is a defense. We find no merit in this contention. The recognition of, and execution of a collective bargaining contract with, a minority union constitutes unlawful assistance particularly where, as here, the Company made no effort to check the authorization cards against its payroll records.[7] And where an employer has violated the provisions of the Act, his good faith is not relevant.[8]

In view of the foregoing, and upon the record as a whole, we find, contrary to the Trial Examiner, that the Respondent Company violated Sections 8(a)(2) and 8(a)(1) of the Act by executing and maintaining a contract with the Union [fol. 13] which recognized the Union as the exclusive bargaining representative of the employees in the specified unit at a time when the Union did not represent a majority of such employees.

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[5] Various stipulations would add 12 employees to the unit while subtracting 18 from it, thus yielding a net amount of 6 employees to be subtracted from the unit total. Therefore, 286 minus 6 leaves 280.

[6] See footnote 5, *supra*. 286 plus 88 minus 6 yields 368.

[7] *International Metal Products Company*, 104 NLRB 1076.

[8] See *The Grand Union Company*, 122 NLRB No. 68.

2. We also agree with the General Counsel's contention that the Respondent Union violated Section 8(b)(1)(A) by executing and maintaining the above agreement as the exclusive bargaining representative of certain employees, a majority of whom it did not represent on the date the agreement was executed. Section 7 of the Act guarantees to employees the right to form, join or assist labor organizations *of their own choosing* as well as the right to refrain from such activity. These rights must, of course, be reconciled with the rights of the majority of the employees in any unit. Section 9(a) of the Act provides that the representative chosen by a *majority* of the employees in the unit shall be the exclusive bargaining representative of *all* the employees in that unit. Employees have, therefore, not only the right to be represented only by a majority representative but also the right to bargain independently and individually with their employer in the absence of a majority representative.

Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Section 7. And there can be no more direct deprivation of these rights, particularly of the right to choose their own bargain- [fol. 14] ing representative or to refrain from so doing, than to impose upon employees a collective bargaining agent they have not chosen. Further, the execution and maintenance of a collective bargaining agreement by an employer and a minority union imposes upon the employees the duty to bargain only through that representative, thus denying to employees the aforementioned right to bargain individually, if they so choose. Therefore, just as an employer violates Section 8(a)(1) [as well as 8(a)(2)] by recognizing and contracting with a minority union, so, too, does a minority union violate Section 8(b)(1)(A) by executing and maintaining a collective bargaining agreement in which it is recognized as the exclusive bargaining representative.[9]

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[9] Our dissenting colleague relies in part on the assertion that the Union committed no overt act except the mere acceptance of the Employer's proffer of recognition. The record is clear that the

Accordingly, we find that the Respondent Union violated Section 8(b)(1)(A) by executing and maintaining the aforementioned collective bargaining contract at a time when it did not enjoy majority status.

[fol. 15]

The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents, as set forth above, which have been found to constitute unfair labor practices, occurring in connection with the operations of the Respondent Company, described in the Intermediate Report, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

1. Bernhard-Altmann Texas Corporation is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

Union was actively seeking recognition at the time such recognition was granted. Under these circumstances, we cannot agree that the Union was the passive recipient of an unsolicited gift bestowed by the Company. We hold that the Union was as responsible as the Company for the extension of recognition and, therefore, was equally guilty of violating the Act.

Nor do we rely, in whole or in part, on our previous decision in *Curtis Brothers, Inc.*, 119 NLRB 232, reversed 43 LRRM 2156 (C.A. D.C. 1958). We decide here only that the execution of a collective bargaining agreement with a minority union, whereby that union is recognized as the exclusive bargaining representative of all the employees in the unit, restrains and coerces the employees in that unit, and that this restraint and coercion is practiced both by the company and the union. No additional authority is required beyond the plain words of Section 9(a) of the Act, which restricts the exclusive bargaining representative status to those representatives selected or designated by a *majority* of the employees in the unit.

3. By recognizing International Ladies' Garment Workers' Union, AFL-CIO, as sole bargaining representative, and executing a contract with it, at a time when said Union did not enjoy majority status, Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(2) and 8(a)(1) of the Act.

4. By executing and maintaining the aforementioned collective bargaining agreement, the Respondent Union has restrained and coerced, and is restraining and coercing, [fol. 16] the employees of the Respondent Company in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

5. The Respondent Company did not violate Sections 8(a)(3) and 8(a)(1) except as found in conclusion 3, above.

6. The Respondent Union did not violate Sections 8(b)(2) and 8(b)(1)(A) except as found in conclusion 4, above.

The Remedy

Having found that the Respondents have engaged in unfair labor practices, we shall require them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent Company to withdraw all recognition from the Respondent Union as representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Company's employees. We shall also order the Respondent Company to cease and desist from giving any force or effect to the collective bargaining agreements executed and maintained by the Respondents. However, nothing herein shall be construed as requiring the Respondent Company to vary any [fol. 17] wage, hour, seniority, or other substantive feature

of its relations with its employees which the Company has established in the performance of this contract.

We shall order the Respondent Union to cease and desist from acting as the collective bargaining representative of any of the Company's employees unless and until said Union shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Company's employees. We shall also order the Respondent Union to refrain from seeking to enforce the collective bargaining agreements executed and maintained by the Respondents.

Order

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. The Respondent, Bernhard-Altmann Texas Corporation, San Antonio, Texas, its officers, agents, successors and assigns, shall:

(1) Cease and desist from:

(a) Contributing support to International Ladies' Garment Workers' Union, AFL-CIO, or to any other labor organization of its employees;

(b) Recognizing International Ladies' Garment Workers' Union, AFL-CIO, as the representative of any of its employees for the purpose of dealing with the Company con- [fol. 18] cerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Company's employees;

(c) Giving effect to the "memorandum of understanding" dated August 30, 1957, or to the collective bargaining agreement, dated October 7, 1957, between the Respondent Company and International Ladies' Garment Workers' Union, AFL-CIO, or to any extension, renewal or modification thereof: *provided*, however, that nothing in this

Decision and Order shall require the Respondent Company to vary or abandon any wage, hour, seniority, or other substantive feature of its relations with its employees which the Company has established in the performance of this agreement, or to prejudice the assertion by employees of any rights they may have thereunder.

(d) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from International Ladies' Garment Workers' Union, AFL-CIO, as [fol. 19] the exclusive bargaining representative of its employees for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent's employees;

(b) Post at its plant at San Antonio, Texas, copies of the notice attached hereto and marked "Appendix A."[10] Copies of such notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by its authorized representative, be posted by the Respondent Company immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posed. Reasonable

[10] In the event that this Order is enforced by a decree of a United States Court of Appeals, this notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material;

(c) Post at the same places and under the same conditions as set forth in (a) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Union's notice herein, marked "Appendix B";

[fol. 20] (d) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent Company has taken to comply therewith.

II. The Respondent, International Ladies' Garment Workers' Union, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Acting as the exclusive bargaining representative of any of the employees of Respondent Bernhard-Altmann Texas Corporation for the purpose of dealing with said Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said Union shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Company's employees;

(b) Giving effect to "the memorandum of understanding," dated August 30, 1957, or to the collective bargaining agreement, dated October 7, 1957, between the Respondent Union and Bernhard-Altmann Texas Corporation, or to any extension, renewal or modification thereof;

(c) In any like or related manner, restraining or coercing the employees of Bernhard-Altmann Texas Corporation in the exercise of the rights guaranteed in Section 7 of the [fol. 21] Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmation action which the Board finds will effectuate the policies of the Act:

(a) Post at its offices and meeting hall at San Antonio, Texas, copies of the notices attached hereto and marked Appendix B.[11] Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail to the Regional Director signed copies of Appendix B, for posting by Respondent Company, at its San Antonio, Texas, plant, as provided above. Copies of said notice to be furnished by the said Regional Director, shall, after being signed by the Respondent Union's representative, be forthwith returned to the Regional Director for disposition by him;

[fol. 22] (c) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order what steps it has taken to comply herewith.

Dated, Washington, D. C.

Feb. 6, 1959.

/s/

.....

Boyd Leedom, Chairman

/s/

.....

Stephen S. Bean, Member

/s/

.....

Joseph Alton Jenkins, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[11] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF A UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

JOHN H. FANNING, MEMBER, concurring in part and dissenting in part:

In October, 1956, the Union began its organizational campaign among the employees of this Employer. As a result of a wage reduction in the topping department, a strike occurred in July, 1957. Thereafter on August 30, 1957, almost a year after the initiation of the Union's campaign, the Employer recognized the Union as the employees' majority bargaining representative and entered into a "memorandum of understanding" providing for a wage increase for all employees, and other substantial benefits. Although the contract included a provision for the check-off of union dues, there was no requirement that any employee join the Union. Prior to the execution of the contract the Employer had not requested and the Union had not [fol. 23] submitted evidence of its majority status. The record reveals, however, that the Union had made a determination, based upon its estimate of the number of employees in the appropriate unit who had selected the Union as their representative, that it was, in fact, the majority representative. Accepting, as I do, the majority's factual findings, it is apparent that the Union's estimate was wrong. In reaching my conclusion in this case I have been aware of the fact that the Union had engaged in a legitimate organizational campaign, that the resulting contract contains substantial benefits for these employees, and that there is nothing in the record to suggest collusion on the part of the Union and Employer to saddle the employees with a sham contract. Nevertheless, I am satisfied that the principle of law which requires an employer to assure itself of a union's majority status either through a Board election or other competent evidence before extending recognition is a sound one in the field of labor-management relations. Accordingly, I agree with the majority that the Employer's recognition of the Union was premature and in violation of Sections 8 (a) (1) and (2) of the Act.

However, I must disagree with the majority that the Union's acceptance of recognition by the Employer in a contract establishing higher wages and better working conditions for the employees constitutes restraint or coercion of

these employees within the meaning of Section 8 (b) (1) (A). The majority's conclusion is, in my opinion, an extension of a theory repudiated by the only Court of Appeals in which the issue has been litigated. In *Curtis Brothers,* [fol. 24] *Inc., 119 NLRB 232,* a majority of the Board held that peaceful picketing for recognition by a minority union was a violation of Section 8 (b) (1) (A). I was not a Member of the Board at the time this case issued. In subsequent decisions, however, I expressed my disagreement with the majority's legal conclusions as stated in that case. *Andrew Brown Company, 120 NLRB No. 89; Machinery Overhaul Company, Inc., 121 NLRB No. 153.* Recently, the Court of Appeals for the District of Columbia reversed the Board's *Curtis* decision in an opinion adopting the Trial Examiner's and the dissenting Member's views, which conform substantially to my interpretation of this Section of the Act. *Drivers Local 639 v. N. L. R. B., 43 LRRM 2156.* The legislative history of Section 8(b) (1) (A) has been fully set forth in prior decisions of the Board. *National Maritime Union, 78 NLRB 971; Perry Norvell Company, 80 NLRB 225; Curtis Brothers, Inc., supra.* In sum, that history reveals through statements of proponents of the Act such as Senators Taft and Ball that Congress intended to limit the application of the "restrain or coerce" to actual threats, intimidation of employees, violence, "the coercion of goon squads and other strong-arm organizing techniques." 93 Congressional Record A 2252. It was not intended to forbid peaceful organizational activity or, indeed, a strike by a minority union for recognition. Consistent with this legislative history and the court's holding that a *strike* for recognition by a minority union is not violative of Section 8 (b) (1) (A), I cannot agree that an employer's *voluntary recognition* of a minority union imposes upon that union [fol. 25] an unfair labor practice solely on the ground that it *accepted* recognition.

In the *Curtis* case the Union committed an overt act i.e., picketing intended to influence employees not to work. Here the Employer committed the overt act, i.e., extending recognition to a union under the mistaken belief that a majority of employees had, in fact, selected the union for bargaining purposes. The Employer, acting at its peril,

illegally assisted this Union in its organizational drive. To hold, however, as the majority does, that the Union in these circumstances must have *refused* the Employer's proffer of recognition to avoid liability under Section 8 (b) (1) (A) seems to me to go far beyond the Congressional purpose of this Section of the Act, far beyond the already repudiated *Curtis* majority opinion, and beyond the realities and equities in labor-management relations. Here was a Union that fought hard to secure substantial benefits for a group of employees. It did secure these benefits from a reluctant employer in a *contract that did not require any employee to be or become a member of the Union.* The majority nevertheless finds that the employees were restrained and coerced because the Union acted on their behalf and in their interest before it had achieved majority status. Employees, of course, have the unquestioned right to choose their own bargaining representative. But this right should not be confused with the statutory prohibition against restraint or coercion by a union. The one involves a question concerning representation, the other, prohibited conduct that removes from the area of labor-management relations [fol. 26] intimidation and threats to force employees to make one choice or another. A union's claim to recognition is a familiar fact of industrial life. I have found no Board or court decision which suggests that such a claim, admitted by the Employer to be valid, suddenly becomes coercion of employees. Section 9 of the Act specifically provides methods and procedures whereby employees can select or *reject* any union asserting a claim to be, or established as, their bargaining representative. The resolution of representation cases is a matter entirely within the discretion of the Board. It is in this forum that an employer's recognition or nonrecognition of a particular union is subject to defeasance or affirmation. Where the Board is satisfied that a question concerning representation exists, the Statute does not recognize any contract as a restraint upon the right of employees to make a choice for bargaining purposes. In the instant case the employees were free at any time to petition the Board for immediate decertification of the Union. The Board would then in its discretion decide whether or not the contract barred an election. A decision that the contract operated as an effective bar would, it is

true, foreclose the holding of an immediate election, but this restraint upon the right of employees to quickly repudiate an unwanted representative would be imposed not by the Statute, not by the Union, *but by the Board itself.* I cannot agree that the operation of discretionary Board rules is sufficient to create an unfair labor practice where none would otherwise exist. It seems to me the majority tilts at windmills in holding that the bona fide attempt of [fol. 27] a minority union to secure substantial benefits for employees through collective bargaining amounts to unlawful restraint or coercion. I see no wrongdoing here and would not fashion an unfair labor practice out of a mere error in statistics.

Dated, Washington, D. C.

Feb. 6, 1959

/s/

John H. Fanning, Member

National Labor Relations Board

[fol. 29] Appendix A

NOTICE TO ALL EMPLOYEES

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT contribute support to International Ladies' Garment Workers' Union, AFL-CIO, or to any other labor organization of our employees.

WE WILL NOT recognize International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive bargaining representative of our employees, unless and until the said labor organization shall have demonstrated its exclusive majority status pursuant to a Board-conducted election among our employees.

WE WILL NOT give effect to the "memorandum of understanding," dated August 30, 1957, or to the collective bargaining agreement, dated October 7, 1957, between International Ladies' Garment Workers' Union, AFL-CIO, and ourselves: *provided,* however, that nothing in this Decision and Order requires us to vary or abandon those wage, hour, seniority, or other substantive features of our relations with our employees, established in performance of any sueh agreement, or to prejudice the assertion by employees of any rights they may have thereunder.

[fol. 30] WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act.

All our employes are free to become, to remain, or to refrain from becoming or remaining members of the abovenamed labor organization or any other labor organization.

BERNHARD-ALTMANN TEXAS CORPORATION
(Employer)

Dated..... By.....
(Representative) (Title)

This notice must remain posted sixty (60) days from the date hereof and must not be altered, defaced, or covered by any other material.

[fol. 31] APPENDIX B

NOTICE TO ALL MEMBERS OF INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO AND TO ALL EMPLOYEES OF BERNHARD-ALTMANN TEXAS CORPORATION, SAN ANTONIO, TEXAS

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT act as the exclusive bargaining representative of any of the employees of Bernhard-Altmann Texas Corporation, San Antonio, Texas, unless and until we shall have demonstrated our exclusive majority representative status pursuant to a Board-conducted election among the employees of the said Company.

WE WILL NOT give effect to the "memorandum of understanding," dated August 30, 1957, or to the collective bargaining agreement, dated October 7, 1957, between Bernhard-Altmann Texas Corporation and ourselves, or to any extension, renewal or modification thereof.

WE WILL NOT in any like or related manner restrain or coerce the employees of Bernhard-Altmann [fol. 32] Texas Corporation in the exercise of the rights guaranteed in Section 7 of the Act.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO
(Labor Organization)

Dated..... By.....
(Representative) (Title)

This notice must remain posted sixty (60) days from the date hereof and must not be altered, defaced, or covered by any other material.

[fol. 33]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Division of Trial Examiners, Washington, D. C.

Cases Nos. 39-CA-691, 39-CA-729, 39-CA-736, 39-CA-737, 39-CA-738

BERNHARD-ALTMANN TEXAS CORPORATION

and

LOYCE LOVELL, JOHN S. TORRES, JULIA C. CONTRERAS, IRENE PEREZ, MINNIE ESCAMILLA

and

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

Party to the Contract

Cases Nos. 39-CB-191, 39-CB-213, 39-CB-219, 39-CB-220, 39-CB-221, 39-CB-222

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

and

LOYCE LOVELL, JOHN S. TORRES, IRENE PEREZ, MINNIE ESCAMILLA, JULIA C. CONTRERAS, NINFA M. ESCAMILLA

and

BERNHARD-ALTMANN TEXAS CORPORATION

Party to the Contract

Mr. Franklin R. Sears, for the General Counsel.

Messrs. Charles J. Morris (Mullinax, Wells & Morris) of Dallas, Tex., and *Sol C. Chaikin*, both of Dallas, Tex., for the Respondent ILGWU.

[fol. 34] INTERMEDIATE REPORT—July 29, 1958

Statement of the Case

The above-entitled cases having been consolidated, on April 25, 1958, as to each of the two Respondents, by order of the General Counsel for the National Labor Relations Board, and a complaint as to each consolidated group having been issued and served by said General Counsel, a hearing was held in San Antonio, Texas, on June 4, 5, 6, 7, 9, and 10, 1958, before the undersigned Trial Examiner.

Both complaints are based upon charges duly filed and served. That issued against the Respondent Employer alleges in substance, after amendment during the hearing, that it has violated Section 8 (a) (1), (2), and (3) of the National Labor Relations Act, as amended (61 Stat. 136), by: (1) entering into certain exclusive recognition agreements with the Respondent Union at times when said Union did not represent an uncoerced majority of employees in an appropriate unit covered by said contracts; (2) discriminating as to the conditions of employment of employees Minnie Escamilla and Julia Contreras, in order to encourage membership in the Respondent Union; and (3) thus interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

The complaint against the Respondent Union alleges in substance, after amendments during the hearing, that it has violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act, by: (1) entering into the said agreements with the Respondent Employer; (2) causing the Respondent Em-
[fol. 35] ployer to discriminate, in violation of Section 8 (a) (3), against the two above-named employees; and (3) thus restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

In their answers, the Respondents denied commission of the alleged unfair labor practices. At the hearing General Counsel and the Respondent Union were represented by counsel. No appearance was made for the Respondent Employer. Full opportunity was afforded counsel to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs and pro-

posed findings and conclusions of law. Comprehensive briefs have been received from General Counsel and the Union.[1]

At the conclusion of the hearing ruling was reserved upon a motion by the Union to dismiss the complaint against it for failure of adequate proof. Said motion is disposed of below by the following findings, conclusions, and recommendations.

Upon the entire record and from his observation of the witnesses, the Trial Examiner makes the following:

Findings of Fact

I. The business of the Respondent Employer

Bernhard-Altmann Texas Corporation is a Delaware corporation, with principal office and place of business in San [fol. 36] Antonio, Texas, where it is engaged in the manufacture of knit wear.

At its San Antonio plant, during the 12-month period before issuance of the complaint, said Employer purchased and had shipped to it from points outside Texas various types of yarn valued at more than $1,000,000. During the same period it sold and shipped outside Texas, from its San Antonio plant, finished products valued at more than $1,000,000.

The Respondent Employer is engaged in commerce within the meaning of the Act.

II. The labor organization involved

International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization admitting to membership employees of the Respondent Employer at its San Antonio plant.

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[1] At this point the Trial Examiner desires to record his appreciation for the industry and earnest endeavor displayed by both counsel, during recesses of hearing sessions and many hours outside the hearing, in examining voluminous employer and union records and from them compiling and preparing various lists which were then placed in evidence by agreement. Their efforts succeeded in holding to a minimum what otherwise might have been an extremely long record.

III. The alleged unfair labor practices

A. Setting and major issues

In summary, the following facts broadly outline the setting in which General Counsel claims, both the Employer and the Union engaged in conduct violative of the Act:

(1) At the San Antonio plan of some 400 persons, employees began signing union authorization cards in the fall of 1956. Stipulated evidence shows that in varying number employees continued, from October 1956, to September 1957, thus to designate the Union as their bargaining representative.

[fol. 37] (2) There is no claim or evidence that during the Union's organization campaign any other labor organization was similarly engaged.

(3) Throughout this campaign the Employer vigorously opposed the Union's efforts. (General Counsel conceded; "I will be glad to stipulate with counsel that there was an area or situation of antipathy between the company and the Union prior to the entrance of the memorandum agreement * * * and the employees were aware of it * * *."

(4) In protest against a wage reduction imposed by the Employer in one of its departments, a substantial number of employees struck on July 29, 1957, and remained on strike until August 30.

(5) On the latter date, following protracted negotiations between top officials of both the Employer and the Union in New York City, the parties executed a "memorandum of understanding" which, among other things, provided for:

a. immediate cessation of the strike.

b. recognition of the Union's claim of majority representation for "all production and shipping employees."

c. an increase in wages.

d. institution of a check off system for union dues.

e. no strike or lockout.

f. drafting of a formal agreement within a specified period.

[fol. 38] (6) Shortly after the execution of this memorandum and cessation of the strike, management officials at the San Antonio plant informed employees generally of the memorandum and urged those who had not already done so to join the Union, in the interest of developing amicable relations after so long a period of bitter dispute.

(7) On October 10, 1957, the two parties entered into a formal contract, in which the Employer agreed to recognize the Union as the "executive bargaining representative" for "all non-supervisory production and shipping department workers * * * excluding among others mechanics, machinists, designers, sample department employees, cafeteria employees, time study employees, plant clericals, guards, watchmen, truck drivers, engineers, maintenance men, and janitors."

(8) It is here noted, and emphasized, that neither the August 30 memorandum nor the October 10 contract contains *any provision requiring membership in the Union as a condition of employment.* Nor is there credible evidence that after August 30—or before, for that matter—any employee was told by any management or union representative that he or she must join the Union. On the contrary, while there is credible evidence that after the conclusion of the strike employees were urged to join, both by management and union officials, they were specifically informed that such action was not compulsory.

Reduced to its simplest terms, the nub of General Counsel's case appears to rest upon his claim the Employer violated the Act on August 30, by rendering illegal support [fol. 39] and assistance to the Union in signing the memorandum of understanding which recognized it as the exclusive bargaining representative of employees "in the collective bargaining unit covered by such agreement at the time of its execution, as required by Section 9, subsection (a) of the Act," at a time when the Union "did not represent an uncoerced majority of the employees" in the said unit.

That General Counsel himself considers the critical issue to be determination of the majority question on August 30 is indicated by the following quotation from his able brief:

> Counsel for General Counsel respectfully submits that the subsequent status of the Respondent Union has no bearing whatsoever. Whether or not a majority status was attained subsequent to the execution of the memorandum agreement as of August 30, 1957, does not in any way materially affect the determination of the Complaint and the hearing. Whether or not the Respondent Company and the Respondent Union are found to have coerced employees subsequent to August 30, 1957, does not control, since the memorandum agreement executed as of August 30, 1957, recognized the Union as the majority representative of the employees covered under the terms and conditions of that agreement. The subsequent agreement * * * is no more than a modification and formalization of the contract according to the terms of the memorandum agreement.

Consideration will therefore be first given to the critical point of the August 30 memorandum.

[fol. 40] B. *The August 30 memorandum*

Early during the hearing counsel for the Union urged dismissal of the complaint against it, claiming that it was defective in that it failed to allege specifically what the appropriate unit was, on August 30. In reply General Counsel said:

> Well, I cannot bind the Board by stating what is an appropriate unit. But on the basis of the contract and the individuals that are covered under the contract in this unit, it is our position that the Union did not represent an uncoerced majority of these people.

The next day, however, General Counsel amended his complaint by alleging:

> As of on or about September 1st, 1957, Respondent Union did not represent a majority of the employees in the unit as set forth and described in the contract by

and between the Respondent Union and the Bernhard-Altmann Texas Corporation, entered into and executed on or about the aforesaid date.

At no point, however, has General Counsel alleged or defined an "appropriate unit," within the meaning of Section 9 (a) of the Act, although in his complaint against the Respondent Employer, he specifically invokes that section, in reference to the same contract.

Deferring at least for the moment the question as to whether or not the complaints were fatally defective—in that they failed to provide the parties with a clear and specific allegation defining his claim as to a legally appropriate unit, the Trial Examiner sets out the following observations, and certain relevant facts.

[fol. 41] 1. Other than by speculation, inference, or assumption, the Trial Examiner is unable from the record to determine the precise definition of the unit in which General Counsel claims the Union did *not* represent a majority on August 30.

2. The state of the record does not afford a competent array of facts from which accurate calculation can be made as to the precise *number of employees, in any unit*, actually on the payroll and properly to be counted, as of August 30.

As to observation 1: Certain inconsistencies in the pleadings themselves have been noted above. It has also been noted that while the August 30 memorandum refers to a broad unit of "all production and shipping employees," with no exclusions cited, the October 10 contract again refers to "production and shipping department workers" but specifically *excludes* some 13 separate groups of employees.

During the course of the hearing, particularly when identifying certain documents, General Counsel made it apparent that he was really contending that the unit to be considered was that containing the exclusions cited in the October 10 contract. And in his brief he refers to "the *unit* described in General Counsel's Exhibits 2 and 3"—which are, respectively, the agreements of August 30 and October 10.

As to observation 2: In evidence are 2 lists of employees: one of some 287 individuals purportedly working during

the week ending August 31, and another of about 120 individuals purportedly working during the week ending July 27, but not on August 31.

[fol. 42] There is competent evidence, elicited by General Counsel, that the list of 287 does not include any "clericals, plant clericals, watchmen and plant supervisors," but no evidence of a persuasive nature that it does not include employees in any or all of some 9 or 10 *other* categories excluded in the October 10 contract.

As to the second list of about 120 employees, the record does not permit an accurate finding as to how many of them should properly be counted as being on the payroll as of August 30. Nor is there any evidence as to whether or not any of these more than a hundred individuals, if properly to be counted as on the payroll, were actually in any of the excluded categories. The plant manager himself admitted that some of such individuals may have been terminated before August 30.

A further example of uncertainty involves a group of some 25 individuals, unidentified, who were hired during the strike. Although the plant manager, Richard Simon, testified that he considered such hirings to be permanent, it is undisputed that Simon's superiors, during the New York negotiations, informed the Union that such persons were only *temporary* employees.

Before drawing conclusions from the above observations, relative to the majority question on August 30, consideration should be given to other factors bearing upon the whole question of illegal recognition.

First, it should be emphasized that in this case there is no "sweetheart" contract element. At no time, so far as the [fol. 43] record shows, was there any other labor organization in the picture. For a period of some 8 to 9 months before the strike the Union had been organizing *employees* —*not* "organizing the employer," and actually in the face of open opposition on the part of the employer. Before entering into the August 30 agreement, the employer had obvious reason to believe, since a substantial proportion of his employees had been on strike for a month, that the Union represented a good part of his employees.

And although no specific figures were cited, the testimony of Sol Chaikin, the Union's Regional Director, is un-

challenged that "on at least two occasions" during the week of negotiations in New York he was advised as to the number of employees whom the Employer "had determined would be working for them or eligible to join the union," and that from cards brought to New York and other information received from San Antonio he was convinced that his organization represented a majority before the claim of majority was made.

It is clear that the Employer did not demand an actual accounting, and there was no determination of majority by way of applying signed cards to any payroll. Obviously such a payroll list would have been impractical if not impossible at that time—for the plant was still struck.

All such evidence leads to the reasonable conclusion that both parties were acting in good faith on August 30: the Union in claiming majority, and the Employer in accepting the claim. There is no hint of collusion or "conspiracy" between the parties, as suggested by General Counsel.

[fol. 44] C. *Conclusions as to the majority status*

The Trial Examiner is convinced, from all the evidence, that the Employer and the Union entered into the August 30 memorandum understanding in good faith. And the existence of at least some 150 cards conceded by General Counsel as probably validly signed, is plainly not an insignificant proportion of some 250-400 employees in various possible units. In any event, the proportion is admittedly such that in a state of uncertainty there is no sure basis for an inference that the Union did not, and could not have, represented a majority in any appropriate unit.

In view of the foregoing factors, it seems to the Trial Examiner that the burden, of providing clear and unequivocal proof to support his claim that the Union *did not* represent a majority, rests even more heavily upon General Counsel than in a situation such as he cites in *Coast Aluminum Company*,[2] where the employer not only entered into an exclusive bargaining agreement with a union *before* the latter had any representation among employees, but then proceeded to do the organizing for the Union himself. And this burden, the Trial Examiner believes, has not been convincingly borne.

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[2] 120 NLRB No. 173.

As it stands, the record provides no reasonable basis for other than a number of speculative possibilities, both as to what an appropriate unit was on August 30, 1957, and as to precisely how many employees were properly to be counted within any or all of these possible units.

[fol. 45] It is a mathematical certainty, the Trial Examiner believes, that dividing a variable even by a constant —or a constant by a variable—can bring only a variable answer. Accuracy in calculating a majority is defeated when any one of the essential factors is uncertain.

In short, the Trial Examiner concludes and finds that the allegations that the Union did not represent a majority of the employees on August 30, 1957, is not sustained by a preponderance of the credible evidence. It follows, and is concluded and found, that all other allegations with reference to the agreements (since the claim of illegality is based upon the question of majority representation), are not sustained by the evidence.

D. *The claimed incidents of coercion*

General Counsel offered evidence as to only two alleged incidents of specific Employer coercion, designed to force an employee into the Union.

One incident involves employee Minnie Escamilla. As to her, evidence is to the effect that in October, after execution of the formal contract and upon protest of the Union that certain contract terms were being violated, the Employer withdrew a raise it had promised Escamilla during the strike and had given her sometime in September. Two witnesses besides Escamilla testified for General Counsel on the matter: Plant Manager Simon and Production Manager Kovalski. Despite the denials of such allegations in the Respondent Employer's answer, Simon and Kovalski cheerfully and willingly testified to the contrary, and ad-[fol. 46] mitted that they told Escamilla, after withdrawing the raise, that she would probably get it back if she joined the Union. The Trial Examiner believes neither Simon nor Kovalski. Although it is clear that there was but one occasion when Escamilla was called into the office to be told that her raise was being withdrawn, the testimony of Simon and Kovalski is in sharp conflict as to who was pres-

ent. Simon said he was not sure Kovalski was there. Kovalski said only he, a union official and Vice-President Plecher were present—and he later admitted that no union official was there. Even Escamilla—whose testimony is replete with self-contradictions—makes no mention of Simon being present or saying anything to her. Since both Simon and Kovalski admitted that the Union's protest was based entirely upon the contract provisions, it is plain that no occasion could have arisen for either of them voluntarily to have tried to force Escamilla to join the Union to get her raise back.

The Trial Examiner finds insufficient credible evidence to support the allegations of the complaint with respect to Escamilla.

The second incident involves employee Julia Contreras who, although she appears to have signed a charge, was not called as a witness. Thus the record is barren of any testimony from the person alleged to have been "coerced." As in the case of Escamilla, Kovalski willingly admitted that either he or Plecher had told her that she would get a raise if she joined the Union. On cross-examination, however, Kovalski admitted facts of the situation which make it [fol. 47] plain that there was no occasion for any member of management thus coercing her. He finally admitted that the Union itself, at a time when Contreras was not a member, protested that the Employer had erred in her seniority and insisted that she be accorded her proper place and the consequent raise. He also admitted that the Union did not condition her getting a raise upon joining. The Trial Examiner cannot believe Kovalski's claim of coercion. Both his testimony and his demeanor raised more than a faint suspicion that he felt it to be his interest to admit coercion in order to get the contract set aside.

E. *Conclusions in summary*

As noted heretofore, General Counsel apparently rested the major part of his entire case upon the single question of the Union's majority on August 30. Had he succeeded in proving that the memorandum of understanding was violative of the Act, the admitted and proven fact that management officials agreed to and did urge employees to join,

after its signing, would have assumed greater significance. Under the circumstances, however, the contract not being proven illegal, the Trial Examiner perceives nothing in the evidence which establishes that either before or after August 30 has either the Employer or the Union exceeded the free-speech privileges accorded by Section 8(c) of the Act. There is no credible evidence of economic threats or of promises of benefit made conditional upon employees joining.

[fol. 48] The Trial Examiner therefore concludes and finds that the preponderance of credible evidence is insufficient to sustain allegations of unfair labor practices by either of the Respondents.

Upon the basis of the foregoing findings and conclusion of facts, and upon the entire record in the case, the Trial Examiner makes the following:

Conclusions of Law

1. International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Bernhard-Altmann Texas Corporation is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. Bernhard-Altmann Texas Corporation has not engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act.

4. International Ladies' Garment Workers' Union, AFL-CIO, has not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

RECOMMENDATIONS

It is recommended that the complaints be dismissed in their entirety.

Dated at Washington, D. C., this 29th day of July 1958.

/s/ C. W. WHITTEMORE

C. W. Whittemore
Trial Examiner

[fol. 49]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH REGION

Cases No. 39-CA-691
39-CA-729
39-CA-736
39-CA-737
39-CA-738

In the Matter of:

BERNHARD-ALTMANN TEXAS CORPORATION

and

LOYCE LOVELL, JOHN S. TORRES, JULIA C. CONTRERAS, IRENE PEREZ, MINNIE ESCAMILLA

and

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO.

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and

BERNHARD-ALTMANN TEXAS CORPORATION

[fol. 50]

Transcript of Proceedings—Wednesday, June 4, 1958

215 U. S. Post Office Building,
San Antonio, Texas.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a. m.

Before: C. W. Whittemore, Trial Examiner.

APPEARANCES:

Franklin R. Sears, Esq., 300 West Vickery, Fort Worth, Texas, appearing as counsel for General Counsel.

Mullinax, Wells & Morris, By: Charles J. Morris, Esq., 1610 National Bankers Life Building, Dallas, Texas; and,

Sol C. Chaikin, 1008½ Wood Street, Dallas, Texas; both appearing on behalf of the Respondent Union.

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[fol. 51] Trial Examiner: Are there any motions at this time?

Mr. Morris: At this time I would like to raise a motion to dismiss by dictating it into the record, Mr. Examiner, if I may.

Trial Examiner: All right.

MOTION OF RESPONDENT UNION TO DISMISS COMPLAINT

Mr. Morris: Respondent Union in all of the instant cases hereby moves to dismiss the complaint in all of said cases for the reason that the same fails to state a violation of the Act. In particular fails to allege the following:

In connection with paragraph 5 of the complaint there is no allegation there or elsewhere in the complaint as to the appropriate unit in which the Board is contending the Union did not have an uncoerced majority.

[fol. 52] Furthermore, in connection with paragraph 5, and the matters related there, there is no allegation in the complaint that any act of coercion existed either on the part of the Company or on the part of the Union prior to September 1, 1957.

In connection with paragraph 8, and the matters relating thereto, the complaint again fails to allege the appropriate unit and furthermore, nowhere does the complaint allege that the union on or about the time the second contract was signed, which contract is referred to in paragraph 8 as on or about October 7 and executed on or about November 7, 1957, that the union did not represent a majority at such time, nor is there any allegation that such majority was the result of any coercion either on the part of the Union, the Company or both.

Wherefore, we move that the complaint be dismissed.

* * * * * * *

[fol. 53] Mr. Sears: I move to amend paragraph 5 of the complaint against the Respondent Union to read as of on or about September 1, 1957 Respondent did not represent an uncoerced majority of the employees at the Company's San Antonio, Texas plant or at any time thereafter.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sears: I move to amend paragraph 8 to read on or about October 7, 1957 a subsequent contract was entered [fol. 54] into modifying and extending the contract entered into on or about the first part of September by and between the Respondent Union and the Company, at which time the Union did not represent an uncoerced majority of the employees at the Company.

I also move to amend paragraph 11 to make it more specific by alleging in the last line of paragraph 11 that it be amended to read Section 8(b)(1)(A).

I have no further motions at this time.

Trial Examiner: All right. Do you have any objection to the motions?

Mr. Morris: Mr. Examiner, I call attention to the fact that paragraph 8 refers to a contract entered into and executed on or about November 7th.

Mr. Sears: October 7th.

Mr. Morris: I call attention to the fact that it says November 7th, although the phrase, October 7th, is used in the first portion of the contract.

The amendment which was just made would amend the first portion, but would not amend as to whether or not the Union represented an uncoerced majority on or about November 7, 1957.

Trial Examiner: Well, I have forgotten whether his proposed amendment included as it did in the other one—

Mr. Morris: It didn't.

[fol. 55] Trial Examiner: —and thereafter.

Do you recall, Mr. Sears?

Mr. Morris: The language he used, Mr. Examiner, was at which time, referring to the date, October 7th.

Trial Examiner: All right.

Mr. Sears: May we have a moment here to check and find out the exact date this contract was entered into?

Trial Examiner: All right.

Be off the record for that purpose.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sears: Move to amend the last sentence of paragraph 8 to strike November 7th and make it October 7th, 1957.

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[fol. 56] Mr. Morris: All right.

I further call attention, however, to the fact that there has still been no amendment with regard to the appropriate unit.

We think we are entitled to know whether or not Mr. Sears is relying upon the same units referred to in the contracts or relying upon different units.

* * * * * * *

Trial Examiner: Now comes the question as to whether or not the amendments have sufficiently taken care of your motion to dismiss. Now, you just indicated that at least one respect you did not think it did. Now, if you wish to elaborate on that point, you may do so. You still urge, as I understand it, the motion to dismiss since there is no allegation of appropriate unit as to either the original contract or the second contract?

[fol. 57] Mr. Morris: Plus the fact that there is still no allegation that either the Union or the Company engaged in

any coercive activity prior to the first contract on or about September 1st. No allegation whether or not there was a majority other than the allegation of failure to have an uncoerced majority as of that time.

However, in connection with that, there is no allegation as to what the appropriate unit is. I think we are entitled to know whether or not the Board is adopting the unit which the parties agreed was appropriate in their various contracts.

Trial Examiner: Well, while it seems to me that the burden of proving a majority or a lack of majority is upon the party who makes the allegation, and although that is an issue which we may have to take up later, I do think that it would be appropriate at least to ask General Counsel why he has not seen fit to allege an appropriate unit since in ordinary circumstances the allegation of an appropriate unit is included.

Is there any reason why you did not allege an appropriate unit?

Mr. Sears: Well, I cannot bind the Board by stating what is an appropriate unit. But on the basis of the contract and the individuals that are covered under the contract in this unit, it is our position that the Union did not represent an uncoerced majority of these people.

[fol. 58] Trial Examiner: Of the unit set out in the contract?

Mr. Sears: In the contract.

Trial Examiner: Well, now, that, I think, is what Mr. Morris was getting at. Now, if that is your allegation, I think it is an appropriate one. I can see where you don't want to get into the question of appropriateness, but if you are alleging that in the unit covered by the contract the Union didn't represent a majority, I see no reason why you should not amend your complaint to at least so indicate. However, I will ask Mr. Morris if he will accept the statement of General Counsel in lieu of making a formal amendment to the complaint.

He has stated now what he means by a majority. It is a majority of the employees in the unit set out in the contracts.

Mr. Morris: Is the General Counsel saying that he is not claiming nor will he claim in this proceeding that the unit set out in the contract is inappropriate, and furthermore, that the allegations with regard to the failure of the Union to have an uncoerced majority refers to such majority within the unit set out in various contracts? Is that the General Counsel's statement?

Trial Examiner: Well, I think in substance he makes certainly no claim that the unit set out in the contract is inappropriate. He is not claiming what unit is appropriate in the sense of a Board certification. He is simply stating [fol. 59] that, as I understand it, that the Union did not at the material times represent an uncoerced majority in that unit, which is set out in the separate contracts.

Is that a—

Mr. Sears: That is correct.

Mr. Morris: I am afraid I could not accept merely the statement, Mr. Examiner. I feel that it is important for the complaint, in order to be complete, to include at least its definition of an appropriate unit, and an allegation that we do not represent an uncoerced majority within such unit.

Now, if the unit happens to be the same as the one which has been set out in the contracts, then I think it's incumbent upon the General Counsel to so state.

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Mr. Sears: In view of an off the record discussion with counsel for Respondent Union, I further move to amend [fol. 60] paragraph 5 of the complaint against the Respondent Union to strike in the second line the word "uncoerced."

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[fol. 61] Mr. Sears: This will be paragraph 8a. I move to amend to include this paragraph to read as follows:

As of on or about September 1st, 1957 the Respondent Union did not represent a majority of the employees in the unit as set forth and described in the contract by and between the Respondent Union and the Bernhard-Altmann, San Antonio, Texas Company. Correction, that is Bernhard-Altmann Texas Corporation. Entered into and executed on or about the aforesaid date.

As of on or about October 7, 1957 the Respondent Union did not represent an uncoerced majority of the employees in the unit as set forth and described in the contract by and [fol. 62] between the Respondent Union and the Bernhard-Altmann Texas Corporation entered into and executed on or about the aforesaid date.

* * * * * * *

Mr. Morris: I have no objection to the General Counsel's amending his complaint in the manner he stated at this time.

I do not, however, waive nor do I withdraw my motion to dismiss in which I raised certain objections with regard to failure to allege an appropriate unit.

Trial Examiner: Very well. I will grant the motion to amend.

* * * * * * *

[fol. 63] RICHARD A. SIMON a witness called by and on behalf of the General Counsel under Rule 43(b), being first duly sworn, was examined and testified as follows:

Direct examination.

[fol. 64] By Mr. Sears:

Q. Would you state your name, please?

A. Richard A. Simon.

Q. And your occupation.

A. Plant Manager, Bernhard-Altmann Texas Corporation.

Q. How long have you been Plant Manager?

A. Approximately three years.

Q. What type of business is the Bernhard-Altmann Texas Corporation engaged in?

A. In the manufacture of sweaters.

Q. Mr. Simon, do you recall entering into a contract or memorandum agreement, either yourself or a representative of your Company, sometime during the latter part of August or first part of September of 1957?

A. I do.

Q. Was this contract or memorandum agreement with the International Ladies' Garment Workers' Union?

A. It was.

• • • • • • •

[fol. 65] Mr. Sears: All right. I offer this document marked GC-2 as General Counsel's Exhibit No. 2, a memorandum or understanding between the Bernhard-Altmann Texas Corporation and Local 590, International Ladies' Garment Workers' Union.

[fol. 66] Trial Examiner: Any objection, Mr. Morris?

Mr. Morris: No objection.

Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

By Mr. Sears:

Q. Mr. Simon, do you recall whether or not a contract was entered into by and between the Bernhard-Altmann Texas Corporation and the International Ladies' Garment Workers' Union on or about October 7th?

A. Yes, sir, there was.

Q. Do you have a copy of that contract, sir?

A. I do.

• • • • • • •

Mr. Sears: The following document marked for identification as GC-3, an agreement between the Bernhard-Alt-
[fol. 67] mann Texas Corporation of San Antonio, Texas and Local 590, International Ladies' Garment Workers' Union, dated the 7th day of October 1957.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Mr. Sears: I now offer these documents, with a duplicate, in evidence, as General Counsel's Exhibit 3.

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[fol. 68] By Mr. Sears:

Q. Mr. Simon, do you have in your possession a list of the people on the payroll of your company as of August 31, 1957?

Mr. Morris: I am going to object to the question because the use of the word "payroll" is ambiguous, Mr. Examiner. It's not clear to me whether counsel for General Counsel is asking for those people who were actually employed and paid as of the week ending August 31, 1957, or whether he is asking for a larger list than that.

I request the question be clarified.

By Mr. Sears:

Q. I will clarify it on the basis of those people who were employed and paid.

A. I do.

* * * * * * *

[fol. 69] Mr. Sears: I mark for identification now as GC-4 a list of names purporting to be a true and correct copy of [fol. 70] people who worked and were paid by the Company through the week ending August 31, 1957. I will offer—

Trial Examiner: Well, may I simply suggest you amend that, if it's to be a copy, what is it a copy of? I understood it's a compilation taken from Company records.

Mr. Sears: This is a list composed of names taken from the Company's payroll records.

Trial Examiner: But it's not a copy of anything, it's not a copy of the payroll, I am sure.

Mr. Sears: No, it is a—

Trial Examiner: It is a compilation of information taken, as I gather from what Mr. Simon said, from the payroll records.

Mr. Sears: That is correct.

Trial Examiner: All right.

Mr. Morris: May I make a statement in connection with my previous statement that I was not objecting to such a list going into the record. I want to be very careful on one point.

I do not object to counsel putting into the record—I assume that this is what this is—a list of persons paid and

persons who were working for the Company during the week of August 31, 1957. If this is what GC-4 is, I raise no objection to that.

I do object to GC-4 being a compilation of employees as such for the reason that—

[fol. 71] Trial Examiner: No, no, I didn't intend to indicate that. But it's a compilation of employees who were, as you say, working—

Mr. Morris: No, I go beyond that. I do not concede that all of the persons on this list are employees within the meaning of the Act. There were some temporary personnel on this payroll.

I do not object to this going into evidence as indicating those persons who were working but in not objecting I do not concede that all of these persons were employees within the meaning of the Act.

Trial Examiner: Well, it wasn't offered as such.

Mr. Morris: And it is my understanding that it is not offered as such, is that correct?

Trial Examiner: Well, he, at least, in his offer he didn't make that statement. He said employees working and on the payroll during the week ending August 31.

Mr. Morris: My objection was to the use of the word "Employees" as being broad, but I want my statement to qualify this.

Trial Examiner: Well, I think you have indicated—Mr. Sears has certainly indicated his willingness that any point you wish to raise as to the accuracy or any point about the document, he is perfectly willing that you should do so at any time. You don't forgo any rights in such respect.

[fol. 72] He has offered it simply as a list turned over to him by a company representative purporting to be precisely what he said it purported to be.

Now, he didn't say actually that it did. He left it open for further examination by you at any time as to its accuracy or authenticity.

* * * * * * *

[fol. 73] By Mr. Sears:

Q. Mr. Simon, I am handing you a document marked GC-4, which you gave to me earlier.

This is a compilation of names of people who worked and were paid by the Company the week ending August 31, 1957?

A. Yes, sir.

Q. There appears to be on this list names that are circled. Did you circle these names?

A. I did.

. . . . . .

[fol. 74] By Mr. Sears:

Q. Mr. Simon, during the two years preceding the contract or memorandum agreement that was entered into on or about August 30 of 1957, did your company have a policy in regard to the employee status of employees following lay-offs?

A. Yes, sir.

. . . . . .

[fol. 75] By Mr. Sears:

Q. You said you initiated this policy, sir. Would you please describe it?

A. That all employees who were laid off for lack of work for a period of more than 30 days were dropped from the payroll or terminated.

Q. When were they terminated?

A. At the end of 30 days.

Q. That if an employee was laid off on the first of June, that if he did not return to work by June 30th he was then terminated?

A. Yes, sir. There were several reasons for that. The main reason is that it tied in with our insurance policy. [fol. 76] That is how I happen to know it was carried out. Our insurance policy, the company was notified after 30 days of an employee not working.

Q. So that you followed the policy when you laid off someone at the end of 30 days—

A. We terminated, moved their card over to an inactive or terminated file and notified the insurance company.

Q. That the employee was terminated?

A. Right.

Q. Did you find at any time that you made exceptions to this policy?

A. Well, I am sure exceptions were made.

Q. But this was the general policy that you followed?

A. This was the policy as outlined. I am sure exceptions were made. Those people that handled the actual mechanics would be in a much better position to give the answer than myself.

Mr. Morris: All right. At this time I think the witness has indicated that he is not qualified to give the details as to this policy, and I move to strike the testimony with regard to the policy.

The Witness: I have already answered in details.

Trial Examiner: Well—

Mr. Sears: He was referring to the mechanics.

Trial Examiner: No, I will permit his testimony to re- [fol. 77] main. He's qualified it that none of us to the extent that—he's already, as to the details, testified. But he's stated that he can't go forward and others would be better qualified to testify.

He's admitted that whatever the practice was, as he knew it, there were exceptions made.

By Mr. Sears:

Q. Mr. Simon, did you prepare a list of names from your payroll records of the people who worked and were paid by your Company during the last pay period in July but were not on the payroll as being paid as of August 31st?

A. I believe I have that list.

• • • • • • •

By Mr. Sears:

Q. So for the purpose of the Company's policy, were these people terminated, do you know, as of August 31?

A. If I remember correctly, they started to terminate all these people, and in view of the fact that it was apparent

[fol. 78] that the strike was about over, and there were certain people out, I did not have them terminate these individuals.

Q. So that—

A. Some may have been, but I don't think all of them were terminated.

• • • • • • •

[fol. 79] By Mr. Sears:

Q. Mr. Simon, on this list of persons paid on July 27, 1957, but not appearing on the August 31, 1957 payroll, do you know whether or not any of these people worked between July 27 and August 31? Now, I want to know specifically whether or not you know that all of these people did work at some time or some of them did work at some time or do you know that none of these people worked between July 27 and August 31?

A. That list referred to, only indicates whether a person was working in the week of July 27 and not paid on August 30th. That list may, and I know includes some people who did and some people who did not get paid sometime during the month of August with the exception of the last August payroll.

• • • • • • •

[fol. 80] Mr. Sears: For the purpose of identification, I will mark this as GC-5.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 5 for identification.)

Mr. Sears: I am not offering these lists in evidence at this time.

Trial Examiner: You are simply having it marked for purposes of identification so if it comes up later, you will know.

Let me just see if I understand clearly what it is. It's a list of persons that were working at the plant on July 27 but were not working and on the payroll on August 31?

The Witness: That's correct, sir.

Trial Examiner: And that is all it is?

Mr. Sears: That is correct.

Trial Examiner: All right.

Mr. Morris: May I add this:

You said on August 31. I think it would mean any time within the week ending August 31.

The Witness: Yes.

• • • • • • •

[fol. 81] By Mr. Sears:

Q. Mr. Simon, on or about August 31, 1957 did you have a meeting with plant personnel consisting of supervisors, in your office?

A. I did.

Mr. Morris: What is that date again, please, sir?

Mr. Sears: August 31.

Mr. Morris: Thank you.

By Mr. Sears:

Q. This was the day following the signing of the memorandum agreement?

A. It was.

Q. Where was the memorandum agreement signed?

A. New York City.

Q. Were you present when it was signed?

A. I was.

[fol. 82] Q. Did you then return to San Antonio, Texas?

A. Immediately.

Q. And that on August 31 you met with the supervisors of your plant?

A. Yes, sir.

Q. In your office here in San Antonio, Texas?

A. Yes, sir.

Q. Did you tell them that this memorandum agreement had been signed the day before?

A. I did.

Q. Did you tell them that they should encourage employees in the plant to sign authorization cards or any cards for the union?

A. I did.

Mr. Morris: Object. Move to strike. May I ask one voir dire question, Mr. Examiner, in connection with the objection?

Trial Examiner: Yes.

Voir dire.

By Mr. Morris:

Q. Was any representative of the Union present at this meeting, Mr. Simon?

A. No.

Mr. Morris: Move to strike as hearsay as to the Respondent Union.

Trial Examiner: Well, again, this is one of those con- [fol. 83] solidated cases where that question very often arises. Obviously it can't very well be held against the union if no union representative were present, but you are forgetting there is a case here against the Company, and he was called under 43b not as a representative of the Union but as a representative for the Company. And obviously if no union person were present, if there is not some other proof, this matter could run only against the Company, anyway.

I think it's very clear from the nature of his testimony that it would be hearsay as relates to the Union, at least so far as explained, any finding I would make in which I held against the Union would be reversible error.

* * * * * * *

[fol. 84] By Mr. Sears:

Q. Mr. Simon, when you held the meeting in your office on August 31 with your supervisors, did you specifically ask them to go out in the various departments and try to get everyone in their departments to sign up with the Union?

A. I did.

Mr. Morris: My objection—may I have a continuing objection to this entire conversation?

Trial Examiner: Yes, if you wish, you may have a standing objection. It is overruled.

• • • • • • •

[fol. 85] By Mr. Sears:

Q. Mr. Simon, prior to the signing of the memorandum agreement in New York City, did the Union at any time submit authorization cards to you for your inspection?

A. They did not.

Q. Did they at any time in your presence submit authorization cards to any officer, agent or representative of the [fol. 86] Bernhard-Altmann Corporation?

A. They did not.

Q. Did they at any time state that they had authorization cards signed by employees of the San Antonio, Texas plant?

A. They did.

Q. Do you recall whether or not any representative of the Union made a statement as to the number of cards that they had signed by employees?

A. I have no recollection of it.

• • • • • • •

[fol. 87] Mr. Sears: That is true. But for this purpose we refer to General Counsel's Exhibit 5, which are persons paid on July 27, 1957 payroll but not appearing on the August 31, 1957 payroll; regardless of when these people were terminated, if they were terminated at all, according to Mr. Simon they would still be considered employees as of August 30. There are 118 names on this list.

General Counsel's Exhibit 4 is a list of the payroll record of August 31, 1957.

I am handing this to you now, Mr. Simon.

By Mr. Sears:

Q. I am asking you for what purpose were those names circled, that are circled on this list?

A. The names circled on this list indicate those employees outside of the unit.

Mr. Morris: I move to strike that as a conclusion.

[fol. 88] By Mr. Sears:

Q. Did you—

Mr. Morris: May I have a ruling?

Trial Examiner: Well, again this was not decided upon by any agreement between you and the Union, but it was your own opinion, is that it?

The Witness: Well, it was all with the Union's knowledge, sir.

Trial Examiner: You mean those circles were put on in the presence of a Union representative?

The Witness: No, but they knew those people for whom they weren't getting dues.

By Mr. Sears:

Q. Are these people clericals, plant clericals, watchmen and plant supervisors?

A. Yes, sir.

Trial Examiner: All right. I will deny the motion to strike.

Mr. Morris: May I have the witness on voir dire?

Trial Examiner: If you wish, yes.

Voir dire.

By Mr. Morris:

Q. Mr. Simon, isn't it a fact that the Union and the Company are still in dispute as to certain individuals, as to whether they are or are not in the unit?

A. Well, there are four people.

Q. At least?

A. Only four that there is any question as to their status, [fol. 89] where there may be a question as to their status.

Q. And that list that you have before you, that represents the Company's position as to who was in the unit, is that correct?

A. That's right.

Q. The Union has not agreed with you on all of those people, have they?

Trial Examiner: Well, as I gather, at least—there are at least four of them there? Are those four on that list?

The Witness: Those four have been circled.

• • • • • • •

[fol. 90] Q. Are the names which you circled—I ask you to again look at the exhibit—those names which you circled, did you circle them based on the exclusion previously covered in the terms of the contract as to those employees that were not in the unit under the contract?

A. Yes, sir.

Q. You did so to the best of your knowledge?

A. Definitely.

Q. And at this time, to the best of your knowledge, the only conflict that you have or disagreement that may exist concerns four people, the names of which you just gave us?

A. Yes, sir.

Q. Did you make a count of the number of people on that list, the payroll list of August 31, whose names were not circled?

A. Yes, sir, I did.

Q. Do you recall what that count is?

A. I think it's 288.

• • • • • • • •

[fol. 91] By Mr. Sears;

Q. Mr. Simon, I would like to once again call your attention back to the time on or about August 31, when you met with your supervisors in your office. Do you recall that? Please answer yes or no.

A. Yes, sir, I do.

Q. Mr. Simon, why did you call your supervisors into [fol. 92] your office?

Mr. Morris: Objection. Immaterial as to why. It would call for a conclusion.

Trial Examiner: No, I will permit the witness to answer. You may answer.

The Witness: Should I answer?

Trial Examiner: Yes.

A. We had signed a contract with the Union and had agreed with the Union that it was for the best interests of

all concerned that as many employees as possible be members of the Union.

By Mr. Sears:

Q. Did anyone representing the Union, an officer or agent of the Union, ask you to encourage the employees to join the union?

A. They did.

Trial Examiner: Well, that raises a point. Is there any reason why they should not? Is there anything illegal about that?

Mr. Morris: Practically everything that is alleged in the complaint is not illegal.

Trial Examiner: Well, I am asking General Counsel what his contention is.

Mr. Sears: I am showing here that there was a conspiracy between the—or at least an agreement between the Company and the Union that the Company would encourage [fol. 93] these employees. The Company did encourage these employees.

Mr. Morris: We will stipulate that there was—that the Union wanted the Company to encourage within their rights of free speech under the Act employees to become members of the Union without coercion, without promises of benefit.

We certainly would not stipulate that they actually did it, and I think the results show that they didn't do it, and there is nothing illegal, and this is completely immaterial to this proceeding.

Trial Examiner: Well, will you accept that stipulation, that they asked them to encourage—

Mr. Sears: Insofar as that—

Trial Examiner: I mean that takes care of the answer.

Mr. Sears: I will accept that.

Trial Examiner: It takes care of the question that you put to the witness.

All right.

* * * * * * * * *

[fol. 94]. Cross examination.

By Mr. Morris:

Q. I call your attention to the meeting you held with your supervisors, I believe it was on or about September 24, Mr. Simon. It's true, is it not, that you cautioned your supervisors not to threaten any employees in connection with their either joining or not joining the Union?

A. Yes.

Mr. Sears: May I make a correction there. You said September 24th. I believe the date was August 31, that was the first meeting with the supervisors.

By Mr. Morris:

Q. Is that your recollection, August 31?

A. Yes.

Q. And that is the meeting you are referring to?

A. Yes.

Q. That is the meeting where you say you cautioned your supervisors not to threaten any of the employees as to whether they joined or did not join the Union?

A. That's correct.

Q. And did you also make it clear to them that the employees did not have to join the Union?

A. I did.

Q. And did you tell the supervisors to so advise the employees?

A. I did.

Q. Have various employees from time to time asked you [fol. 95] whether or not they had to join the Union?

A. They have.

Q. And have you advised them that they did not have to?

A. Told them the choice was entirely up to them.

Q. Did any of them ask what would happen to them if they did not join?

A. Yes.

Q. And what reply did you give them?

Mr. Sears: Objection.

Mr. Morris: What grounds?

Mr. Sears: I would like to know who asked him.

Trial Examiner: No. I will permit the witness to answer.

By Mr. Morris:

Q. You may answer the question. What reply did you make?

A. Would you repeat your question, please?

Q. When employees asked what would happen to them if they did not join the Union, what reply did you give them?

A. Nothing would happen.

• • • • • • •

[fol. 96] Q. All right.

Call your attention to a statement on page 4 of the Answer which the Company filed in this case, again referring to your meeting with the supervisors, where it is stated, and I quote from your Answer, it was expressly stated that no one would be discriminated against in any form for refusing to join the Union.

State whether or not you so advised the employees. Excuse me. You so advised the supervisors.

A. I did.

Q. And you so advised them to tell the employees that they would not be discriminated against, is that correct?

A. That is.

• • • • • • •

[fol. 97] Call your attention now to your conference in New York at or about the time the memorandum agreement [fol. 98] was signed on August 30, this being in evidence as General Counsel's Exhibit 2. How long were you in New York at that time?

A. I went up on a Tuesday or Wednesday and left on the 30th, whatever day that was.

Mr. Chaikin: Friday.

A. Friday or Saturday.

By Mr. Morris:

Q. You weren't present during all of the conferences, were you?

A. No, sir.

Q. In fact, you did not come in until the last day of the conference, isn't that correct?

A. That's correct.

Q. The parties were meeting, however, all that week, practically on a daily basis?

A. Yes, sir.

Q. And by the time you came in on Friday there had been a meeting of the minds, had there not? The parties were in agreement, it was a matter of formalizing certain things?

A. Yes, sir, pretty formalized.

Q. So when you stated that you had no recollection of cards being presented or offered, you refer to the time you were present on Friday and you do not refer to any time the parties were present on Monday, Tuesday, Wednesday or Thursday, is that correct?

A. I wasn't asked for that. I was only asked in my presence.

[fol. 99] Q. That's right, you were asked about your presence.

A. That is all I answered to.

Q. And so your answer had reference only to the time you were present?

A. That's correct.

Q. All right. I just want the record to be clear on it.

You stated that there were four persons in dispute as to whether or not they were or were not within the contractual unit.

A. Yes, sir.

Q. You named David Gomez, Jesus Ayala, Mariano Zuniga and Manuel Ochoa.

Were there not several others, to-wit:

Anthony Plata? Wasn't there a dispute about Anthony Plata?

A. No, sir. Right now, the only questions that exist is a possible question of the full-fashion foremen.

Q. How about Alberto Moreno?

A. No, sir.

Q. Morin.

Horst Trenz?

A. No, sir.

Q. Are those persons in or out in your opinion?

A. They are in the unit—out of the unit. I beg your pardon. Out of the unit.

[fol. 100] Q. Doesn't the Union contend that they are in the unit?

A. No, sir.

Q. You are saying that those three persons, Plata, Morin and Trenz, are out of the unit?

A. Yes, sir.

Q. And that the union has agreed to that?

A. Yes, sir.

Q. Could you be mistaken in that?

A. I couldn't be mistaken, no, sir. My interpretation could very well, but I could not be mistaken.

Q. But your interpretation might be wrong?

A. I am quite sure that I am right.

Q. At any rate, there have been—

A. Can I make a statement, explain myself?

Trial Examiner: Well, are you willing?

Mr. Morris: Go ahead.

The Witness: Explain why I took that or made that conclusion.

At the present time we have a grievance, let me see, an unsolved or unconcluded grievance, regarding the status of these four men. There is no grievance existing regarding the status of any other employee in our organization.

By Mr. Morris:

Q. No formal grievance?

A. Right, that's right.

Q. But there have been discussions with regard to the [fol. 101] coverage of the contract, whether the contract covers some of these other people or does not cover some of these other people?

A. Not recently; no, sir.

Q. Well, there haven't been any recent conversations but all the disputes have not been resolved, isn't that correct?

A. I am not aware of any dispute existing today.

Trial Examiner: Well, isn't it sufficient his explanation of why he feels there is no dispute is there is no grievance

existing? Now, that may be reasonable of may not be a reasonable position.

By Mr. Morris:

Q. Would you accept the Trial Examiner's statement there, that the reason you feel—

A. I am only a subpoenaed witness, Mr. Morris.

Q. Don't be so modest, Mr. Simon. I am asking whether or not this is—if he correctly characterized your position, that is, that the reason you feel there are no further disputes is that there is a grievance on those four only, that is, Gomez, Ayala, Zuniga and Ochoa, is that correct?

A. You mean that's the only basis for my statement?

Trial Examiner: Well, isn't that the basis of why you say—

The Witness: Yes, sir.

Trial Examiner: Well, that would seem reasonable to me.

Mr. Morris: All right. I will accept that.

* * * * * * *

[fol. 102] Redirect examination.

By Mr. Sears:

Q Mr. Simon, while you were in New York during the last week in August of last year did anyone representing the Company have a conversation with you concerning whether or not the Union had offered or had supplied authorization cards signed by employees in the San Antonio, Texas plant?

* * * * * * *

A. No one discussed the subject with me.

* * * * * * *

[fol. 103] Recross examination.

By Mr. Morris:

Q. Mr. Simon, did you have with you copies of the Bernhard-Altmann Texas Corporation payroll when you were in New York the latter part of August 1957?

A. No, sir.

Q. Were there copies of such payroll in the New York office of the Company?

A. No, sir.

Q. You did, however, know the number of employees of [fol. 104] your Company at that time? I am not asking you what it was but I am asking you whether you had knowledge.

A. Now, I will have to qualify, I will have to explain my answer to this, so there will be no misunderstanding.

I sometime in the month of August, I believe it was the month of August, wrote a letter to New York in which I identified a head count of the number of employees, and outside of that, there is no other—have there been any other count of employees in New York.

Q. This was a letter sent during the strike, is that correct?

A. I am almost sure it was during the strike, I am almost sure it was.

Q. And you were reporting the number of payroll on strike and so forth, is that correct?

A. Yes, I believe that was the letter contained that information.

• • • • • • •

[fol. 105] Thomas Kovalski a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sears:

Q. Will you state your name, please?

A. Thomas Kovalski.

Q. Will you spell your last name, please?

A. K-o-v-a-l-s-k-i.

Q. Mr. Kovalski—

Mr. Sears: I request that I have this witness under 43(b).

[fol. 106] Mr. Morris: Mr. Examiner, I am not sure that this witness would qualify under 43(b).

Trial Examiner: Well, I think you better qualify him first. He wasn't previousy identified as a member of management, as I understood it. He may be a supervisor.

Mr. Sears: I will.

By Mr. Sears:

Q. Mr. Kovalski, will you state your occupation, please?

A. Production Manager of the Bernhard-Altmann Texas Corporation.

* * * * * * *

By Mr. Sears:

Q. Mr. Kovalski, I would like to call your attention to [fol. 107] a period of time around the end of August of 1957, specifically August 31. Do you recall that date?

A. Yes.

Q. On that date did you attend a meeting in the office of Mr. Richard Simon, Bernhard-Altmann Texas Corporation?

A. Yes.

Q. Do you recall who else was present at that meeting?

A. Well, Mr. Simon called together the supervisors and foremen and floorgirls at that meeting.

Q. Do you recall what was said by Mr. Simon at that meeting, if anything?

A. He said that the Company signed an agreement with the Union for a contract, Union contract. That we are a Union shop now.

Q. Did Mr. Simon tell you or ask you to urge employees in the various departments to join the Union?

A. Yes, he did.

Q. Did you do so?

A. Yes, I did.

* * * * * * *

[fol. 108] Redirect examination.

By Mr. Sears:

Q. Did the Company have any policy in regards to seniority prior to entering into the contract, to your knowledge, speaking of the contract of August 30th? If I may,

I would like to restrict this solely to the area of restoring seniority to people who had been laid off or fired.

Do you know of any policy concerning that?

A. Yes, we had restored people's seniority before the contract was recognized.

Q. Do you recall specifically in what manner this was restored? By this I mean if the individual was fired or laid off, was there any period of time beyond which his seniority was not restored, if he was rehired, to your knowledge?

A. I don't recall. I don't fully recall the seniority procedure at that time.

I am thinking about that, sir. Could I add this to your question:

That as far as seniority went, we had—we knew, Miss Stricklen and myself, had records and whenever the records showed that a person quit voluntarily or was fired, they lost their seniority. Now, whenever a person left because of illness, pregnancy, laid off due to lack of work, and it was—we would most of the time restore their seniority to [fol. 109] the first hiring date.

Q. Was this limited in any way upon rehiring within a period of time, to your knowledge?

A. No, I don't recall that it was a limit of time.

* * * * * * *

[fol. 110] COLLOQUY BETWEEN
TRIAL EXAMINER AND COUNSEL

Mr. Sears: Mr. Examiner, at the request of counsel for the General Counsel, this stipulation was agreed to by and between Mr. Morris as attorney for the Respondent Union and myself prior to the hearing and before Mr. Morris as attorney for the Respondent Union was apprised of certain allegations quoting Mr. Plecher in conversations with and about Julia C. Contreras and Minnie Escamilla, and such stipulation was agreed to also in lieu of a subpoena being issued by counsel for the General Counsel and calling Mr. Plecher from New York City.

We do not contend that any adverse inference be drawn by the absence of cross examination by counsel for Re-

spondent Union or that Respondent Union is bound by the testimony of Mr. Plecher contained in this stipulation.

I will now mark for identification the stipulation of testimony as GC-9.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Trial Examiner: And that may go in by agreement? That is the stipulation referred to in the oral remarks?

Mr. Sears: That is correct. I offer it in evidence as [fol. 111] GC-9.

Trial Examiner: It may go in, then, by agreement.

(The document heretofore marked General Counsel's Exhibit No. 9, for identification was received in evidence.)

Mr. Sears: May we go off the record for just one moment?

Trial Examiner: Yes. Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sears: I have marked here a document as GC-10, a list of names and corresponding dates across from them. This list constitutes cards signed by individuals purporting to be employees of the Bernhard-Altmann Texas Corporation, the dates that such cards were signed, and in addition at the bottom of the fifth and last page there is added in handwriting the name of Guadalupe Balderma[illegible]th the notation that the Union's records kept in the regular course of business show a signature by the aforesaid individual on 8-8-57, and the card returned to her at her request on 9-24-57, and Mr. George Lambert, the business agent of the Respondent Union, would so testify.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10 for identification.)

[fol. 112] Mr. Morris: Add to that would so testify that such card was in the possession of the Union for the period of time between those two dates and that it was returned on or about the date indicated.

Mr. Sears: I would like to further state that there are certain corrections made in ink as to several dates on the list, and that on the fifth and final page the name of Sira Ramirez should be stricken as it is a duplicate and is contained on the third page of the list.

Do you so agree, counsel?

Mr. Morris: Yes. It's my understanding that all of the inked interlineations and corrections are part of the stipulation. Is that correct?

Mr. Sears: That is correct.

Trial Examiner: Very well. Then it may be received, I gather, as General Counsel's Exhibit 10.

(The document heretofore marked General Counsel's Exhibit No. 10 for identification was received in evidence.)

Mr. Morris: It's my understanding that this stipulation concedes the validity of all the cards shown on this list as to authenticity without any party at this time waiving objections as to whether or not the persons who signed such cards were employees. Is that correct?

Mr. Sears: That is correct.

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[fol. 113] Mr. Morris: No objection. I think the record should reflect in view of the fact that there will not be any actual cards in evidence, that the General Counsel and all parties concede that the authorization form of those cards [fol. 114] is sufficient to meet the authorization requirements for represen ation under the Act.

Mr. Sears: I will so concede and agree.

Trial Examiner: All right. Thank you very much.

(The document heretofore marked General Counsel's Exhibit No. 8 for identification was withdrawn.)

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[fol. 115] Mr. Sears: Mr. Examiner, General Counsel's Exhibit 10 has been altered by agreement between counsel for the Respondent Union and counsel for General Counsel by striking certain names from the list.

By stipulation between counsel this list now constitutes the names of all employees who signed union cards prior to October 10, 1957, and the date shown of such signing,

with the exception—oh, pardon me, strike with the exception.

This list does not include cards signed after October 10, 1957, nor does it include additional cards signed by any employee who signed other cards after the date shown.

This is with the exception of three individuals, Jessie Ayala, Manuel G. Ochoa and Mariano Zuniga.

The status of these three individuals is in dispute and it is my position as counsel for General Counsel that the aforesaid individuals are foremen and not in the unit. This position is opposed by counsel for Respondent Union and testimony will be presented in relation to the status of these individuals.

For the purpose of these proceedings it is agreed that all of the persons whose names appear on this list shall be considered as employees of the Respondent company as of [fol. 116] on or about August 30, 1957 and as of on or about October 10, 1957, and that they are within the units as described and set forth in the agreements in evidence as General Counsel's Exhibit 2 and 3.

Therefore, in addition the following individuals should be added to the present list of people considered also as employees of the company. I have a list of twelve names here. I am afraid that I am very poor at Spanish and I would probably mispronounce them quite a bit. I will hand them to—

Trial Examiner: Hand them to the reporter.

Mr. Sears: I will hand them to the reporter so that he may copy them.

Fernando Garza, Adelaide Gomez, Antonio Guerrero, Louisa Maldonado, Alice Ramirez, Mary Rivera, Mary Salinas, Adella Tober, Elvira Contreras, Catalina Rodriguez, David Gomez, Willie Voges.

Mr. Morris: Will you read that back, the names?

(Record read)

Mr. Sears: It is further stipulated and agreed by and between counsel for Respondent Union and counsel for General Counsel that General Counsel's Exhibit 3, an agreement between Respondent Union and Respondent Company, which shows upon its face a date of October 7th, shall be considered as executed in full as of on or about October

10th, since it appears that the execution by both parties was not completed until October 10th.

[fol. 117] Mr. Morris: We join in that entire stipulation.

We would want the stipulation to reflect, however, that there is no issue between the parties with regard to the employee status of Jessie Ayala, Manuel Ochoa and Mariano Zuniga. It is agreed that those persons were employees of the company on or about the August 30, 1957 date and on or about the October 10, 1957 date.

The only issue between the parties relates to whether or not these persons are within supervisory status or not.

Is that correct?

Mr. Sears: That is correct.

Trial Examiner: Well in the first place, thank you, counsel, for the stipulation. For my own clarification, now, these ten employees whose names have been read into the record—

Mr. Sears: Twelve.

Trial Examiner: Was it twelve?

Mr. Sears: Twelve.

Trial Examiner: You say should be added as employees of the company. To which list should that be added, 4 or 5? Neither of which actually are in evidence here.

Mr. Sears: They should be for all purposes added to number 4, I think would be the better way of adding them, since the one marked for identification as Number 5 is the list of people—

Trial Examiner: Working the last of September but not on August 31 is what 5 is.

[fol. 118] Mr. Sears: Oh, I beg your pardon.

Trial Examiner: According to the identification I have here, 4 was the list of employees paid and working on August 31.

Mr. Morris: I would suggest that they cannot be physically added to any of the lists, Mr. Examiner, because the lists purport to be something else. They simply have to be added on to the entire total.

Trial Examiner: Let me ask you this:

Don't you have somewhere or can't you draw up a single list of employees?

Mr. Sears: Well, 4 and 5 constitute two lists which contain the names of individuals, those names which are

uncircled that are considered to be within the unit covered by the contracts, and these people are considered to be employees of the company regardless of whether or not they did physical work and were paid.

Trial Examiner: Well, let me get at this, then. What you want this list of union card signers you just stipulated about—

Mr. Sears: Yes, sir.

Trial Examiner: —applied to General Counsel's Exhibit 4 and 5 plus the twelve names?

Mr. Sears: That is correct.

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[fol. 119] Mr. Sears: At this time I would like to offer in evidence those documents marked for identification as GC-3, 4 and 5.

Trial Examiner: All right. Do you have any objection?

Mr. Morris: No objection. I have checked the payroll records and insofar as GC-4 and 5 reflect persons who were working for the company on the dates shown on the faces of GC-4 and GC-5, those documents appear to be correct and I raise no objection in terms of authenticity.

Trial Examiner: All right.

Mr. Sears: There are certain additions and corrections, made on GC-4 and GC-5, which have been initialed by Mr. Morris and myself.

Trial Examiner: All right, fine.

Then 3, 4 and 5 are now received.

(The documents heretofore marked General Counsel's Exhibits Nos. 3 through 5 for identification were received in evidence.)

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[fol. 120] Mariano Zuniga a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Morris:

Q. Would you state your name, please?

A. Mariano Zuniga.

Q. And where are you employed?
A. Bernhard-Altmann.
Q. And how long have you worked there?
A. Seven years.
Q. And what is your job at Bernhard-Altmann?
A. Foreman.
Q. Foreman in what department?
[fol. 121] A. Knitting Department.
Q. Is that any particular part of that department? Is that Full-Fashion, Flat or what?
A. It's Full-Fashion.
Q. Full-Fashion Knitting.
And how many other employees work with you?
A. Oh, about thirteen, altogether, on my shift.
Q. Are you foreman of a certain shift?
A. Yes, sir.
Q. What shift is that?
A. It's the "B" shift.
Q. B shift.
Now, that shift will work at different times at different hours, is that correct?
A. Yes, sir.
Q. Is it true that normally the Full-Fashion Knitting machines and the Full-Fashion Knitting machine operators work around the clock? In other words, there are three shifts, is that correct?
A. Correct.
Q. And yours is the B shift and sometimes it will work day shift, sometimes graveyard, sometimes swing, is that correct?
A. Correct.
Q. Now, would you tell the Trial Examiner what you do during the day? What is your job? Just explain in your own words what your job is.
[fol. 122] A. Well, my job is fixing chains.
Q. Would you explain to the Examiner what you mean by chains, what are these chains?
A. That is for different styles and different orders.
Q. Let me see if I understand you.
For each style garment being knitted there is a different kind of chain, is that correct?
A. Yes, sir.

Q. You have to take these chains and make certain adjustments on them in order to have this chain when it's on the knitting machine produce the style that you are making, is that correct?

A. We change the size markings and sizes.

Q. Sizes and style, is that correct?

A. Yes, sir.

Q. Now, do you have any sheets which give you instructions on what changes are to be made in the chains?

A. We have some charts.

Q. Charts.

Do you prepare these charts or are they already prepared for you?

A. They are already prepared for me.

Q. They are prepared for you.

And your job, then, is to conform the chain to the chart for the style and size that is being produced, is that correct?

A. Correct.

[fol. 123] Q. Now, do you do that for all of the machines in your department?

A. For every one of them.

Q. That is, for all of the full-fashion knitters on the machines during your shift, is that correct?

A. Correct.

Q. And about how much of your time do you spend doing that kind of work during the day?

A. Well, for instance, like we have lots of small orders now, and make-ups and samples, so all of the time I am making some chains to be ready for it, fixing the chains up.

Q. Let me see if I understand you, Mr. Zuniga.

You have a lot of small orders and make-ups at the present time, is that right, and samples?

A. Correct.

Q. Samples, too?

A. Correct.

Q. Does that mean that there are more changes to be made?

A. Yes, sir.

Q. If a great many individual units were being produced of the same style in the same size, there would not have to be any significant changes in the chain, is that right?

A. No, sir.

Q. But when there are many styles, many sizes and many make-ups, you have to change it often, is that correct?

[fol. 124] A. That's correct.

Q. Is your testimony, then, that at the present time because of these many changes, you are spending most of your time making chains?

A. Yes, sir.

Q. Now, what else do you do besides make chains?

A. Well, contribute the work to the toppers.

Q. Contribute the work to the toppers. Would you explain that?

A. Well, for instance, if those toppers stay behind, well, I come along, put the machine on make-ups or samples to hold up the knitters.

Mr. Morris: Would you read that answer, please?

(Last answer read)

By Mr. Morris:

Q. Now, what do the toppers do? Would you explain to the Trial Examiner the work of the toppers so he will understand that?

A. Well, just top the cuffs.

Q. That is as meaning to you, Mr. Zuniga. Do they spread the cuffs on needles?

A. On needles, yes, sir.

Q. And this is an operation that co-ordinates with the knitting operation, is that correct?

A. Correct.

Q. You do that before the work is put on the knitting [fol. 125] machine, is that correct?

A. That is correct.

Q. So that you have to kind of keep the work flowing evenly between the toppers and the knitting machines?

A. Correct.

Q. And in order to do that you use the expression putting the knitting machines on make-up. What do you mean on make-up?

A. Well, if I set the machine for make-ups, they hold the knitters for making production, and that way the toppers get—they get caught up with their work.

Q. All right.

Now, when you take the work to the toppers how do you give it to them? Do you carry it to them?

A. Yes, sir.

Q. You carry it by hand, is that correct?

A. Yes, sir.

Q. And this is the way they get their work?

A. Correct.

Q. Now, do you sometimes operate the knitting machines, yourself?

A. Well, once in awhile when, for instance, if they can't find a knitter to come in Saturdays, well, they call me up so I run the samples or whatever they want me to do.

Q. In other words, you fill in on vacancies, is that correct?

A. Correct.

[fol. 126] Q. Is that true when someone is sick, too?

A. Well, no, I never did run a machine when somebody is sick.

Q. I see.

Have you ever had occasion when there was somebody sick and they could not get another knitter? What was done then? Did you ever run the machine?

A. I just let the machine stop there.

Q. You let the machine stop.

Now, to what extent do you tell the knitters and the toppers what to do? Just explain to the Examiner the extent to which you tell them what work they are to perform.

A. Well, what you mean about that?

Q. Well, do you tell them what work they are supposed to do?

A. Well, I have told them what order and what style to run.

Q. Now, where do you get this information about the orders and the styles?

A. Well, from Mr. Coveleski.

Q. Who is Mr. Coveleski?

A. Supervisor.

Q. He is the supervisor over the Knitting Department, is that correct?

A. Correct.

Q. Is Mr. Potts also a supervisor in that department?

A. Well, I understand he is a supervisor and the general mechanic.

[fol. 127] Q. Do you take orders from him, too?

A. Yes, sir.

Q. You take orders from both Mr. Coveleski and Mr. Potts?

A. Yes, sir.

Q. Now, who was the supervisor before Mr. Coveleski?

A. Mr. Andrew Gonzales.

Q. And do you remember when the change was made, when Mr. Coveleski became supervisor?

A. That was during the strike.

Q. Sometime during the strike?

A. Yes.

Q. Does Mr. Coveleski have the same jobs and duties, substantially the same thing as Mr. Gonzales used to do?

A. Just about the same thing.

Q. About the same.

Now, if a knitter has trouble with his machine or trouble with his chain while the chain is on the machine, does he fix it, himself? Does he call you over or a little of both, or just what happens?

A. The knitter calls me up.

Q. And what do you do?

A. Well, I just go ahead and fix the chain or whatever—whatever the trouble is.

Q. Now, this chain is necessary to the production of these sweaters, is that correct?

[fol. 128] A. That is correct.

Q. Now, what is your rate of pay?

A. $1.60.

Q. $1.60.

Do you know what the shop average is for the knitters?

A. Some of them $1.92. The highest average is on Mr. Amoros. He is $2.00 on an average.

Mr. Sears: May we go off the record for a moment?

Trial Examiner: Yes. Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Morris: It is stipulated by and between the parties that the full-fashion knitters for the fourth quarter of 1957 had an average earnings of $1.86 and a fraction cents per hour.

Trial Examiner: You join in that stipulation?

Mr. Sears: With the qualification that this is determined by piece rate, also.

Mr. Morris: We agree to that.

Trial Examiner: All right. Thank you very much.

Mr. Sears: For the purpose of the record, I would like the record to further show that I am not objecting to counsel's leading questions, and I will not object, but under the present circumstances I will refrain from doing so.

Trial Examiner: All right.

Mr. Morris: Well, I do not wish to be leading the witness. [fol. 129] I am trying to shorten the record and if I lead the witness in any prejudicial manner, I expect to be stopped.

Trial Examiner: All right. Well, if Mr. Sears doesn't, I will try to.

Mr. Morris: It is further stipulated by and between the parties that for the same period of time the average hourly earnings for the toppers was $1.94 and a fraction cents per hour.

Mr. Sears: And I further qualify that that they, too, are based on piece rates.

Mr. Morris: That is correct.

Trial Examiner: Very well. Thank you.

By Mr. Morris:

Q. Now, you actually give the work both to the toppers and to the full-fashion knitters, is that correct?

A. Yes, sir.

Q. Mr. Zuniga, has the company refused to pay you the five per cent provided for by the contract?

A. Yes, sir.

Q. Is your status in that five per cent part of an arbitration proceeding which is now pending?

A. Yes, sir.

Mr. Sears: Perhaps, counsel, you would stipulate that this grievance or arbitration proceeding was filed within the last three months or last two months.

Mr. Morris: I would stipulate whenever it was filed. I [fol. 130] don't think the filing time is material because the requested relief is for retroactive relief.

Mr. Sears: You say the company has refused to pay. I would like it to show that when was there a request for it to be paid.

Mr. Morris: I will be happy to stipulate that from the very first day it has been—always been the position of the union that these three knitting foremen were in effect leadmen and within the bargaining unit, and not supervisors within the meaning of the Act.

I don't think the company would contest that that was always the union's position, and I will so stipulate if you so care to.

Mr. Sears: I don't care to stipulate on that point, counsel.

Mr. Morris: Well, those are the facts and I can't stipulate otherwise.

Trial Examiner: All right.

By Mr. Morris:

Q. Did you participate in the strike?

A. Yes, sir.

Q. You went out on strike along with the knitters, is that correct?

A. Correct.

Q. I believe the record will show that you have signed a union card. You are a member of the union, are you not?

[fol. 131] A. I signed a union card.

Mr. Morris: May I have just a moment, please?

Trial Examiner: Yes, surely.

(Discussion off the record.)

Trial Examiner: Back on the record.

By Mr. Morris:

Q. Mr. Zuniga, do you spend a part of your time pulling cotton?

A. We have a cotton puller now. He stay behind, if I have time to help him out, well, I help him out.

Q. You say you have a cotton puller now. When did you get a cotton puller?

A. About two or three weeks.

Q. Two or three weeks ago?

A. Yes, sir.

Q. Before that did you do cotton pulling?

A. Topper used to do it.

Q. Did you help him?

A. Yes, sir, I helped him.

Q. That was part of your regular job to help on the cotton pulling?

A. Well, I don't know if it's part of my job or not. I did it.

Q. You did it, did you not?

A. Yes, sir.

Q. And did you do it regularly?

[fol. 132] A. Yes, sir.

Q. And did you do it regularly at times when neither Mr. Andrew Gonzales, Mr. Coveleski or Mr. Potts were present?

A. Yes, sir.

Mr. Sears: Mr. Morris, for the purpose of the record, cotton pulling, as you have described it, that is part of the knitting process that we are referring to now?

By Mr. Morris:

Q. Would you explain cotton pulling, what do you do with cotton pulling?

A. Well, we had different styles there, they are very hard to top, and one of the toppers—when the toppers stay behind on that kind of cuffs, they hire some cotton pullers so they can clean up the—take the cotton out so the knitters can transfer them on the machines.

Q. Let me see if I can help you explain this. The last few ribs are cotton, is that correct, and these are pulled off and not kept as part of the garment, is that correct?

A. That's correct.

Q. And this is the process of cotton pulling that you are talking about?

A. Correct.

Q. Do you spend part of your time measuring ribs, counting ribs?

A. Well, I do that on a new yarn and when I start up a new style, I have to measure those ribs.

[fol. 133] Q. Was this work formerly done by somebody else?

A. We used to have a girl there doing that kind of work.

Q. And that is now part of your job, is that correct?

A. That is part of my job.

Q. And how long has it been part of your job?

A. Well, since I started, I did it before, then they hired a girl, then they take the girl away and then I—I am doing it now.

Q. Were you doing it before the strike?

A. No, sir.

Q. They had a girl before the strike?

A. Yes, sir.

Q. Since the strike you have been doing it, is that correct?

A. Yes, sir.

Q. Or state whether or not you have been doing it.

A. I have been doing it.

Q. But even before this girl was hired to do the work you had done the work before she came, is that correct?

A. Correct.

Q. The matter of measuring and counting these ribs?

A. That is a part of my job, to do that.

Q. All right.

And state whether or not you also did that even when the girl was there doing it. Did you also do part of that work?

A. Correct.

[fol. 134] Q. State whether or not you also plyer the needles.

A. I do that.

Q. These are the needles on the topping bars?

A. Well, on the topping bars, the needles on the machine, too.

Q. On the machine.

It's necessary, is it not, to keep these needles straight at all times, is that correct?

A. Correct.

Q. And when a needle becomes bent it must be straightened out?

A. Correct.

Q. Or else it must be replaced, is that correct?

A. Correct.

Q. And is this part of your job?

A. Well, the knitter is supposed to plyer—that is part of the knitter's job, to—

Q. Do you also—

A. But if the knitter came to fix the—plyer the needle right, well, they call on me and not plyer the needle or change the needle.

Q. That is part of your job?

A. That is part of my job, too.

Q. Do you recall whether or not there was a girl at one time who had the job of plyering needles?

[fol. 135] A. Yes, we had a girl but they plyer those bars, toppers, for the toppers.

Q. And this is the same kind of work that you are now talking about, is that right?

A. Yes, sir.

Q. Now, state whether or not you have ever been told that you have authority to hire anybody.

A. No, sir.

Q. Is your answer that you have not been told?

A. I haven't been told.

Q. State whether or not you have ever been told that you have authority to fire anyone.

A. I never been told.

Q. What is your understanding with regard to your authority to hire or fire?

A. Oh, well, I was told by Mr. Andrew Gonzales whenever a knitter refuses to do something, well, I can lay them off for a couple of days.

Q. And do you know whether or not the knitter is supposed to report to Mr. Gonzales or to Mr. Coveleski—

A. Well—

Q. —if that happens?

A. If Mr. Gonzales wasn't there, well, I have to send the knitter to Mr. Gonzales next morning.

Q. And this is what Mr. Gonzales told you?

[fol. 136] A. Correct.

Q. And what then happens? Does Mr. Gonzales—I don't want to lead the witness. What happens when the knitter goes to Mr. Gonzales?

A. Well, I have never sent a knitter there, myself.

Q. Have you ever had occasion to lay off anybody?

A. No, sir.

Q. How long have you been in this position?

A. Well, for a couple of years.

Q. And during that time you have never laid off or had occasion to lay off anyone, is that correct?

A. I have never laid off no one.

Q. State whether or not you are supposed to lay off a person who refuses to do work if either Mr. Potts or Mr. Coveleski or Mr. Gonzales, anyone who is there, is present in the factory at the time.

A. Well, I send them to Mr. Potts or Mr. Coveleski first.

Q. State whether or not there are some times when they are not in the factory and you may be working with your shift without the presence of either Mr. Potts or the supervisor, either Mr. Gonzales or Mr. Coveleski, is that correct? Do you understand my question?

A. I didn't understand it very well.

Q. All I am saying is are there times such as on one of these graveyard shifts that neither Mr. Potts nor Mr. [fol. 137] Coveleski, nor Mr. Gonzales before Mr. Coveleski, are present? Do you understand?

Mr. Morris: If I may be permitted just to lead the witness, this is not a point in dispute.

By Mr. Morris:

Q. There are times when there are none of these supervisors present when your shift is working, is that right?

A. Correct.

Q. And that may be the graveyard shift, is that right?

A. Correct.

Q. At that time if a knitter refuses to perform work, what are you supposed to do, as you understand it?

A. Send them home, and then come and talk next morning to Mr. Coveleski or Mr. Potts.

Q. All right.

Suppose you are working a day shift or any shift when either Mr. Potts is there or Mr. Coveleski is there and this would be also true before Mr. Coveleski came there and Mr. Gonzales was there, what are you supposed to do then if a knitter refuses to work?

A. Well, I tell the knitter to talk to Mr. Potts or I go and tell Mr. Potts about it.

Q. All right.

State whether or not you have authority to send a knitter home as you have just testified about for anything, any [fol. 138] other reason, other than their refusal to do the work which is assigned to them. Do you have authority to send him home for any other reason?

A. Well, if there is no work on the machine, well, I can send a man home.

Q. Well, this is not for discipline, though, is it?

A. No, just—

Q. Because there is no work?

A. Lack of work.

Q. I see. Are you paid on an hourly basis? Are you paid just for the time you work?

A. Just for the time I work.

Q. You do not receive a salary, is that correct?

A. No, just by the time card.

Q. Just by the time card. You punch a time card?

A. Correct.

Q. Now, I want to be sure the record is clear here. You can send a man home if there is no work and you can send a man home if a supervisor is not present, and the man refuses to perform work. Is there any other reason when you could send a man home that you have been advised?

A. No.

Q. Your answer is no, is that correct?

A. Correct.

Q. Have you ever recommended that a person be fired?

[fol. 139] A. No, sir.

Q. Do you know whether or not you have authority to recommend that someone be fired?

A. No, sir.

Q. Have you ever been advised that you had that authority?

A. No, sir.

Q. I call your attention now to the month after the strike. State whether or not you attended any supervisors meeting called by the company for the purpose of advising the supervisors that the union and the company had signed a memorandum and that the supervisors were being urged to encourage employees to join the union. Did you attend any such meeting called by the company?

A. No, sir.

Q. Were you invited to attend any such meeting?

A. No, sir.

Mr. Sears: Was he working?

By Mr. Morris:

Q. Were you working during the month of September?

A. Yes, sir.

* * * * * * *

[fol. 140] Mr. Morris: Before proceeding with this next witness, we have one further stipulation, that is, that it is stipulated by and between the parties that if called to testify, Jessie Ayala and Manuel Ochoa would testify substantially the same both on direct and cross as the witness Mariano Zuniga, inasmuch as those are the two other foremen on the two other shifts referred to in this record.

Trial Examiner: You join in that stipulation?

Mr. Sears: I join in the stipulation.

Trial Examiner: Very well. Thank you.

Mr. Morris: There is just this qualification, that the witness, Jessie Ayala, would further testify that his wage rate is $1.45 per hour, whereas the wage rate for Mariano Zuniga and Manuel Ochoa is $1.60 per hour.

Trial Examiner: Will you accept that?

Mr. Sears: So stipulate.

* * * * * * *

[fol. 141] MRS. IRENE HERNANDEZ a witness called by and on behalf of Respondent Union, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Morris:

Q. Would you state your name, please?

A. Mrs. Irene Hernandez.

Q. Mrs. Hernandez, where are you employed?

A. I am not employed at the present.

Q. Were you formerly employed at the Bernhard-Altmann Company?

A. Yes, sir.

Q. Were you employed there during the month of September 1957?

A. Yes, sir.

Q. Call attention to the fact that the record shows that you signed a union card on September 24, 1957. I have reference to General Counsel's Exhibit 10.

Do you recall signing a card?

A. Yes.

Q. Would you tell us where you were when you signed that card?

A. At the cafeteria.

Q. And who was present?

A. The whole first department was present there.

Q. And who gave you the card to sign?

A. Jessie Ayala.

Q. State whether or not you signed that card voluntarily.

A. Yes, I did.

[fol. 142] Q. State whether or not you had been advised that you did not have to sign a card in order to work at Bernhard-Altmann.

A. Yes, I had.

Q. State whether or not you had been advised that you would receive the same benefits, whether you signed a union card or did not sign a union card.

A. Yes.

Q. State whether or not anyone told you that you had to sign a union card.

A. Nobody told me I had to sign a card.

Q. Would you state the reason why you signed a union card, Mrs. Hernandez?

Trial Examiner: Well—

A. Because I wanted to be a member of the union.

Trial Examiner: All right.

By Mr. Morris:

Q. State whether or not you would have signed a union card even if the company had not signed a memorandum agreement with the union a few weeks before you signed your card.

Mr. Sears: Objection.

Trial Examiner: Well, I will sustain the objection. That is speculative, certainly.

Mr. Morris: Note our exception.

Trial Examiner: Well, if you want to ask her whether or not she had previously signed any other union card, I [fol. 143] would permit that, but this is so speculative that I will sustain the objection.

By Mr. Morris:

Q. Now, you didn't go to work until after the strike, did you?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. In other words, you weren't even on strike, is that correct?

A. No.

Q. And you weren't working during the time?

A. I wasn't working there at that time.

Q. State whether or not you signed your card shortly after you became an employee.

A. Yes, I did, the next day.

Mr. Morris: That is all.

* * * * * * *

[fol. 144] VICTORIA GONZALES a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Morris:

Q. Would you state your name, please?
A. Victoria Gonzales.
Q. And where do you work?
A. Bernhard-Altmann.
Q. And were you working there in the month of September?
A. Yes, sir.
Q. 1957?
A. Yes, sir.
Q. The record shows that you signed a union card on September 18th.
A. That's right.
Q. Is that correct?
A. Yes, sir.
Q. Do you remember where you were when you signed that card?
A. In the plant.
Q. And do you remember who gave you the card?
[fol. 145] A. Yes.
Q. Who?
A. Frances Cantu.
Q. Do you know whether or not she was a representative of the union or had any position in the union?
A. I think she did. She had the card and gave it to me. I asked her for it.
Q. You asked her for it?
A. Yes, sir.
Q. Now, do you know whether or not she was a union committee-woman?
A. I think she was.
Q. Did she ask you to sign or did you ask her for the card?
A. I asked her for the card.

Q. State whether or not you signed the card voluntarily.
A. That's right.
Q. Who was your floor lady at that time?
A. Margaret Gonzales.
Q. State whether or not she ever passed out any cards to people in her department.
A. Not that I know of, sir.
Q. Were you working there—
A. Yes, sir.
Q. —all during September?
A. Yes, sir.
[fol. 146] Q. And did she ever say anything to you or to others in your department in your presence—
A. No, sir.
Q. —about signing a card?
A. No, sir, not a word.
Q. Did she ever say anything one way or the other?
A. One way or the other, no, sir.
Q. State whether or not you had been advised that you would get the same benefits whether you signed a card or did not sign a card.
A. Yes, sir, we had been advised that.

* * * * * * *

[fol. 147] Q. State whether or not you were promised any benefits if you signed a card.
A. Yes, the same as if we would be in the union or non-union, we would get the same.
Q. And who told you that?
A. Mr. Simon gave us a speech.
Q. And he told you that in the speech?
A. Yes.
Q. State whether or not you signed the card voluntarily.
A. That's right.

Mr. Morris: I believe that is all.

* * * * * * *

[fol. 148] PAULITA BELTRAN a witness called by and on behalf of Respondent Union, being first duly sworn, was [fol. 149] examined and testified as follows:

Direct examination.

By Mr. Morris:

Q. Would you state your name, please?
A. Paulita Beltran.
Q. Is that Mrs. or Miss?
A. Miss—Mrs.
Q. Mrs. Beltran, the record shows that you signed a union card on September 1st, 1957. Do you recall that?
A. Yes, sir.
Q. Excuse me, October 1st. October 1st.
You do recall signing the card, do you not?
A. Yes, sir, I do.
Q. And do you recall now that it was October 1st or—
A. Yes, I do.
Q. Or about that time. I am not asking you for the exact date.
A. Yes, sir.
Q. And where were you when you signed that card?
A. At home.
Q. At home?
A. Yes, sir.
Q. And how did you happen to be signing the card at home? Who presented it to you?
A. Well, a young man and his wife. She went over, you know.
Q. Were they representatives of the union?
[fol. 150] A. Yes, sir, I am sure they were.
Q. And do you recall whether or not his name was Jerry Levine?
A. Yes, sir, that is his name.
Q. He and his wife came over, is that correct?
A. Yes, sir.
Q. And state whether or not you were promised any benefits if you signed a union card?
A. No, sir.

Q. State whether or not you had been advised that you did not have to sign a card if you did not want to.

A. Yes, that's right.

Q. State whether or not you understood that you would get the same benefits and that you had been so told, whether you signed a card or did not sign a card?

A. Yes, I did.

Q. State whether or not you signed your card voluntarily?

A. Yes, sir, I did.

• • • • • • •

[fol. 151] Mr. Morris: Mr. Examiner, as the result of an off the record discussion counsel for the General Counsel and myself have arrived at a stipulation as follows:

That counsel for the Respondent Union has made diligent effort to locate the employees shown on General Counsel's Exhibit 10 who have signed a union card on or after August 31, 1957. And this search has been directed at all such persons, and that we have located a substantial number of such persons, and that the parties stipulate that if called to testify each of these persons would testify substantially as the preceding three witnesses, with the exception that some of them would testify that they did hear one or more speeches by Mr. Chaikin during the month of September 1957.

[fol. 152] Mr. Sears: So stipulate.

Trial Examiner: Very well. Thank you very much.

I think in order to protect both counsel on this point, the record may reflect it, but I think perhaps the Trial Examiner should say that he assumes that the reason this stipulation has been entered into is because the Trial Examiner indicated that any more oral testimony on this point would be in my opinion cumulative.

Mr. Sears: That is correct.

Mr. Morris: That is correct. We have here in the courtroom a number of these witnesses present now. We have arranged for an interpreter for some of them, and we had an additional list to call for a later time.

Trial Examiner: Well, I appreciate very much you entering into this stipulation, and I think it will shorten the hearing somewhat.

• • • • • • •

[fol. 153] Mr. Morris: It is further stipulated by and between the parties that the strike which has been referred to in the record as having begun on July 29th and lasting until on or about August 30, 1957, was in protest of a wage reduction of employees of the Topping Department.

Mr. Sears: So stipulate.

• • • • • • •

[fol. 154] Mr. Morris: It is further stipulated by and between the parties that during the period preceding the strike and during the strike there was in effect a policy in the Looping Department whereby persons hired for the work of looping were hired as trainees and retained on probationary non-permanent employee status for a three-month period. At the completion of such period they were considered to be permanent employees.

May we go off the record for a moment again?

Trial Examiner: Yes. Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Morris: This stipulation has reference to the following named individuals:

Josephine G. Valencia, hire date 6-17-57; Mary Cora Medina, hire date 7-29-57; Blanch A. Martinez, hire date 6-17-57; Lupe F. Hernandez, hire date 7-29-57; Mary L. Hernandez, hire date 6-17-57; Eudelia Galindo, hire date 6-17-57; and Hermelinda L. Carrillo, hire date 8-1-57.

That completes the stipulation.

Trial Examiner: Do you join in that?

Mr. Sears: So join.

Trial Examiner: All right. Thank you very much.

Does that complete your stipulation?

Mr. Morris: Yes, it does.

Trial Examiner: Well, now, for my enlightenment, I [fol. 155] think probably at this point in the record what is your contention as to this last stipulation?

Mr. Morris: That—

Trial Examiner: Is it your claim that these individuals either should or should not be counted?

Mr. Morris: Should not be counted on certain dates and should be counted on other dates, depending on whether or

not they had completed the three-month period. This will show on the record so that for purposes of the first date they should not be counted. For purposes of the second date they should if they were sti" on the payroll.

Trial Examiner: All right.

Mr. Sears: I believe that all of them should not be counted on the period of time concerning the August 30th and three of the seven should not be counted concerning any other date.

• • • • • • •

[fol. 156] Sol C. Chaikin recalled as a witness by and on behalf of the Respondent Union, having been previously duly sworn, was examined and testified further as follows:

Direct examination.

Mr. Morris: I am not sure whether or not this is in the record. Forgive us if it is repetitious, Mr. Examiner.

By Mr. Morris:

Q. Would you state your position with the International Ladies' Garment Workers' Union, please?

A. I am the Director of the Lower Southwest Region of the ILGWU.

Q. Which includes the City of San Antonio?

A. It does.

Q. Shortly before August 30, 1957, did you have occasion to be in New York City?

A. I did.

Q. What was the nature of your business there?

A. I was requested to come to New York City for a conference with the president of our International on Monday.

Q. Do you know the date?

A. I believe it was Monday, the 26th of August.

Mr. Sears: We will say Monday, regardless. If it was the 25th, 26th or 27th, it was on or about that period of time. It's perfectly all right with me, counsel.

Mr. Morris: I will accept that. O.K.

[fol. 157] By Mr. Morris:

Q. State whether or not any of the employees of the Bernhard-Altmann Company also went to New York at or about the same time.

A. Two employees of the company arrived in New York City on Sunday night, the 25th of August.

Q. And what were their names?

A. Jessie Ayala and Jaime Juarez.

Q. Do you know whether or not they had in their possession any signed authorization cards?

A. Yes, they did.

Q. Did you see these cards when they arrived?

A. I certainly did.

Q. State whether or not you were apprised during your stay in New York that additional cards had been signed?

A. I was.

Q. You were in telephone communication with San Antonio, is that correct?

A. Twice a day.

Q. Do you know what disposition was made of these cards that were in the possession of Mr. Ayala and Jaime Juarez?

A. I do.

Q. Were you present with them in connection with the disposition of these cards?

A. I was.

Q. What was done with them?

[fol. 158] A. They were turned over to our General Counsel, Morris Glushien.

Q. Morris Glushien, he is the General Counsel for the Ladies' Garment Workers' Union?

A. He is.

Q. Was he participating in the discussions held in New York at this time?

A. Completely.

Q. Do you know how long he had the cards in his possession or at least—strike that—do you know approximately how long after the cards were turned over to him that he returned the cards to the Texas representative?

A. Several days, at least.

Q. All right.

A. Full days and nights.

Q. All right.

Do you know whether or not Mr. Glushien met with the company attorney during that week?

A. He certainly did.

Q. What is the company attorney's name?

A. Mr. Leo Guzik.

Q. Were those meetings all in the presence of the other representatives of the company and the union or were there separate meetings between the attorneys by themselves?

Mr. Sears: I object. Show whether or not he was present [fol. 159] or not at any meetings.

By Mr. Morris:

Q. Were you present at any meeting when both attorneys were present?

A. I was.

Q. What was the physical layout of these conference rooms? Would you describe that for us?

A. Well, conferences were held in two suites, in each of two suites, and at one time or another, and moved back and forth. One suite belonged to the Executive Vice-President of our union, Louis Stulberg. The other suite of rooms belonged to President David Dubinski.

Q. Were conferences held in both of these suites?

A. At one time or another, yes. And sometimes simultaneously.

Q. State whether or not it was reported to the persons present at these conferences, being both the union representatives and the company representatives, that Mr. Guzik and Mr. Glushien had been in consultation with each other separately.

A. It was reported to both and to me several times.

Q. All right.

At or about that time had you made any determination as to the number of employees working in production and shipping for the Bernhard-Altmann Company in San Antonio?

A. I had made a determination, yes.

Q. Had you compared such determination with the cards that you have previously referred to?

[fol. 160] A. Almost every day.

Q. State whether or not such determination indicated that there was a majority of signed authorization cards among those employees.

A. During that week we became certain of the fact that we had a majority of signed cards.

Q. This was based on a comparison of these determinations?

A. Certainly that and other information.

Q. Had the company advised you at any time of the approximate number of employees at its San Antonio plant in the shipping and production departments?

A. They had advised us on at least two occasions of the number of people whom they had determined would be working for them or eligible to join the union.

Q. Did your determination of majority indicate a majority of that number which the company advised you?

A. It did.

Q. State whether or not at any time you requested the company, you or anyone in your presence, on behalf of the union, requested the company to extend recognition and bargaining before you had made this determination that you had a majority.

A. Not prior to that time.

Q. In your official capacity as Regional Director would you have been advised had such request been made?

A. Oh, absolutely.

[fol. 161] Q. I now call your attention to the period of time between the signing of the memorandum agreement in evidence as General Counsel's Exhibit 2—

Mr. Sears: You are referring to the memorandum agreement, counsel?

Mr. Morris: Yes.

Mr. Sears: That is General Counsel's Exhibit 2.

By Mr. Morris:

Q. Call your attention to the time between the signing of that memorandum on or about August 30, 1957, and the collective bargaining contract executed on or about October 10, 1957, in evidence as General Counsel's Exhibit 3.

State whether or not during that period of time there were various discussions with regard to the inclusions and exclusions in the bargaining unit to be written into the contract later executed as General Counsel's Exhibit 4. 3, excuse me.

Mr. Sears: 3.

A. I would say there were many conversations and each of them very lengthy concerning individuals and/or job classifications which should or should not be covered by a subsequent collective bargaining agreement.

By Mr. Morris:

Q. Now, as a result of those conversations state whether or not the language embodied in—

Mr. Morris: Where is the contract?

Mr. Sears: Which one?

Mr. Morris: Where is the contract?

[fol. 162] Trial Examiner: 3 is what he is looking for.

Mr. Sears: By the way, I object to your question. The contracts speak for themselves as to what language is included in there, as to what covers the unit, who is covered, and who isn't.

Mr. Morris: I haven't finished the question yet.

Trial Examiner: Oh, I would have stopped him if he had.

Mr. Morris: That wasn't my question.

Read me my question.

(Record read)

By Mr. Morris (Continuing):

Q. —Article 2 of the contract in evidence as GC-3 represents the final agreement of the parties with regard to the description of the unit.

Mr. Sears: I object to that question. The contract was executed on or about October 10th. It's presumed to be the final agreement between the parties as to what the contract covers.

Trial Examiner: No, this is permissible, whether or not there was a final one, whether or not there was any sub-

sequent one. Might well be followed up here, but this is permissible.

The Witness: Would you repeat the question?

Mr. Morris: Would you read the question, please?

(Last question read)

A. I would say that insofar as listing inclusions and exclusions, that the list is the final agreement, but when we [fol. 163] try to place individuals in the various classifications, we to this date have no final agreement on—

By Mr. Morris:

Q. Let me see if I understand your answer. In terms of description of a unit that was the final agreement of the parties, is that right?

A. That's right.

Q. Had there been continued conversations representing disputes between the company and the union with regard to the inclusion of specific job classifications or employees in certain job classifications?

A. So far as pinpointing specific employees as to whether they should be covered by this agreement or not covered by this agreement, there is disagreement up to this minute regarding a number of employees.

Q. You know as to how many employees?

A. Sometimes six and sometimes seven or eight, depending on the expansion of the work load in various departments.

Q. Have there been periods of time when the dispute as to inclusions was greater than your six or eight that you mentioned?

A. Oh, at one time I think we were disputing 30 or 40 people.

Q. I now call your attention again to your conferences in New York City immediately prior to the signing of the memorandum agreement of August 30th. Was there any discussion at such conferences with regard to any of the persons whom the company had hired during the strike?

[fol. 164] A. Yes, there was.

Q. Would you tell us what conversations occurred and with whom?

A. Apparently there was an agreement as to the contents of the memorandum and while they were being typed up Mr. Guzik and Mr. Altmann asked about procedures for the strikers to return to work.

Q. Let me interrupt you at this point and ask you to identify Mr. Altmann.

A. Mr. Hans Altmann, son of Bernhard Altmann, a major stockholder of apparently all of the Altmann Corporations, represented to us as the Executive Vice-President of Bernhard-Altmann Texas Corporation, or a leading officer of the Bernhard-Altmann Texas Corporation.

Q. All right. Please continue.

A. The company indicated or these representatives indicated that they had suffered greatly in loss of production during the period of the strike, that it would be to the interest of everyone concerned if everybody could get back to work as quickly as possible, that there might be some problems involved in getting everybody back to work because there wasn't enough of a backlog so that all of the loopers who were out on strike could be readily re-employed, and that it might be necessary for these strikers to remain unemployed for a short period of time, and they asked first whether we wouldn't accept the situation like [fol. 165] that because the girls would be eligible for unemployment insurance, and the loopers who were then currently working were only working part time so that there would be little economic loss for the girls who were out as against the girls who were in.

We accepted their explanation of the situation and agreed that those loopers for whom they had no work would remain unemployed until called back.

Secondly, they proposed that in order to get as much work knit as could be possibly knit, they proposed to us that we should agree that the Full-Fashion Knitting Department should run seven days a week, twenty-four hours a day, because in that manner they could work each shift six hours a day and have four shifts running and keep everybody at work.

When I said that I didn't know about the advisability of going into that, that if our knitters came back to work they would expect to work eight hours a day, three shifts,

and that this would cause a dislocation, Mr. Altmann and Mr. Guzik said that the men who were already in the plant were temporary employees at best, that it should not be a matter of concern to me, that if the union would agree to work four shifts six hours a day, seven days a week, with the further provision that the clause calling for time and a half for all Sunday work, that if that clause were suspended, that the company was prepared to go ahead and work this entire group to get as much knitting into the [fol. 166] process, into the production process, so that everybody could be re-employed as quickly as possible and begin earning as much money as they possibly could.

On that representation and because we had apparently made peace, we agreed that we would co-operate to that extent and as a result waived the provision of time and a half, and I represented myself as being fully prepared to go back to San Antonio and to convince the Full-Fashion Knitters who were on strike to accept that situation of a seven-day week, six-hour a day work load.

Q. All right.

Now, these employees that were referred to as temporary at best, you stated the employees in the plant. Was it made clear which employees in the plant Mr. Altmann or Mr. Guzik was referring to?

A. Oh, it was perfectly clear that he meant employees hired at or around July 29th and past that date.

Q. That was the date the strike started?

A. That's right.

* * * * * * *

[fol. 167] Mr. Sears: I will be glad to stipulate with counsel that there was an area or situation of antipathy between the company and the union prior to the entrance of the memorandum agreement.

* * * * * * *

[fol. 168] Trial Examiner: If you will add to the stipulation that you made the words "and the employees were aware of it."

Mr. Sears: And the employees were aware of it is sufficient.

Trial Examiner: I think that will take care of it.

Mr. Morris: We will accept that stipulation.
Mr. Sears: I so stipulate.

* * * * * * *

[fol. 169] Mr. Morris: It is stipulated by and between the [fol. 170] parties as follows:

That the names listed here and below appear on the payroll records of the company, and according to the individual payroll sheets for such employees as contained in the Bernhard-Altmann payroll ledger for the year 1957, such record reflects that the employees named last worked for the company on the date shown following the name for each such person.

There are three exceptions to this general form for each of the named persons. Those exceptions are specifically as follows:

Concepcion O. Riojas, shows last to have worked week ending February 9, 1957, but a returned date week ending October 25, 1957, the record reflecting that between those two pay periods the employee did not work for the company.

Likewise as to Luz Garcia, this employee was not employed between pay period ending August 24, 1957, and pay period ending October 19, 1957, and likewise for Olga Z. Morales, not employed between pay period ending September 14, 1957, and pay period ending December 13, 1957.

As to all of the other employees listed below the form heretofore set out shall be followed.

Trial Examiner: All right.
Mr. Sears: I so stipulate.
Trial Examiner: Very well. Thank you very much.
Mr. Morris: Carlota Sanchez, 8-3-57.
[fol. 171] Helen Martinez, 8-24-57.
Janie A. Salazar, 8-17-57.
Eugene Wilson, 8-24-57.
Ruben Davila, Jr., 8-3-57.
Bernard Kovalski, 8-31-57.
James R. Clark, 8-31-57.
Petra Castillo, 8-3-57.
Joe Lopez, 8-17-57.
Michael Chapa, Jr., 8-10-57.

Benito Saenz, 8-24-57.
Howard Hufft (Hoffa), 9-5-57.
Margaret G. Barrientes, 9-7-57.
Juan Cantu, Jr., 9-7-57.
Caralina J. Carreon, 10-5-57.
Hermelinda L. Carrillo, 8-31-57.
Estella Faz, 8-1-57.
Leilani Flores, 9-14-57.
Anita Franco, 9-21-57.
Petra C. Galindo, 10-5-57.
Estela M. Garcia, 9-7-57.
Maggie M. Harris, 9-21-57.
Mary L. Hernandez, 9-21-57.
Antonia L. Ledesma, 9-14-57.
William P. Letcher, 9-21-57.
Selestine Lopez, 9-7-57.
[fol. 172] Luisa Mares, 9-28-57.
Wayne D. Martin, 8-31-57.
Blanche A. Martinez, 9-14-57.
Mary C. Martinez, 9-14-57.
Petra Martinez, 7-27-57.
Alicia S. Munoz, 10-19-57.
Robert L. Phelps, 8-31-57.
Roque P. Ruiz, 10-5-57.
Frank Samudio, 9-7-57.
Edelia V. Sanchez, 9-7-57.
Josephine G. Valencia, 9-14-57.
Eudelia Galindo, 9-14-57.
John S. Torres, 9-14-57.

* * * * * * *

RICHARD SIMON recalled as a witness by and on behalf of General Counsel, having been previously duly sworn, was examined and testified further as follows:

[fol. 173] Direct examination.

By Mr. Sears:

Q. Mr. Simon, I believe there has been testimony in the record and I also believe it's been agreed that there was a strike last summer at your plant, is that correct?

A. Yes, sir.

Q. During that period of time, which there was a strike, did the company hire any new employees?

A. Yes, sir.

Q. Approximately how many, to your knowledge, were hired?

A. Oh, I think about 25.

• • • • • • •

[fol. 174] Cross examination.

By Mr. Morris:

Q. Call your attention to the matter of the last stipula-
[fol. 175] tion which reflects that your payroll record shows that Mr. John Clark, whom you referred to, James Clark, excuse me, last v rked for the company the payroll week ending 8-31-57.

A. Yes, sir.

Q. He has not since ever worked for the company, is that correct?

A. No, sir.

Q. Beg pardon?

A. No, sir.

Q. Your answer is he has not?

A. No.

Q. Nor—

A. He quit.

Q. He quit?

A. Yes, sir.

Q. He quit, then, on or about the date shown on his record in the last stipulation, is that correct?

A. That's correct.

Mr. Morris: Just a moment.

By Mr. Morris:

Q. Around the end of last year, either in December or January, the company presented a seniority list to the union, did it not?

A. Yes, sir.

Q. This seniority list did not contain the names of the replacements hired during the strike, did it?

[fol. 176] A. I don't think so.

Q. Beg your pardon?
A. I don't think so.
Q. Can you be sure of your testimony?
A. I am almost sure of it.
Q. Your testimony is that it did not?
A. Yes.

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[fol. 177] BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 2

Memorandum of understanding between The Bernhard Altmann Texas Corporation and Local 590, ILGWU

1. The present strike is immediately terminated.

2. The Union represents that it has been designated as bargaining representative by a majority of the employees of the production and shipping employees; and the employer recognizes the Union as the exclusive bargaining agent for all production and shipping employees.

3. Striking employees shall return to work as soon as work is available for them, without discrimination.

4. Plant minimum shall be $1.10 per hour after 60 days employment.

5. Effective September 3, 1957 all wages shall be increased by 5%.

6. There shall be 3 paid holidays—Labor Day, Christmas Day, and Fiesta Day. However, during 1957, Thanksgiving Day is substituted for Labor Day.

7. There shall be one week's paid vacation after one year of employment and two weeks' paid vacation after 5 years of employment. Vacation pay shall be based on average earnings.

8. Hereafter the employer shall pay 50% of the hospital and surgical plan and the employee shall pay 50%.

9. The employer shall contribute 1¼% of its total payroll within the unit to the Union Health Center.

10. The employer will institute a check-off system for union dues.

[fol. 178] 11. Employees shall be entitled to 4 hours pay when called in to work.

12. There shall be a trial period of 60 days.

13. Piece rates shall be fixed by the employer subject to review by the union.

14. Sunday work shall be at time and a half. However, to assist the firm in its present emergency, Sunday work shall be at straight time rates until December 31, 1957.

15. Union may review piece rates for toppers prior to October 1, 1957 with arbitration in event of disagreement.

16. There will be a system of seniority by departments.

17. There shall be no strikes or lockouts during the term of the agreement.

18. Arbitration of all disputes.

19. Agreement shall run until December 31, 1959.

Formal agreement containing these terms to be promptly drafted by the attorneys and signed by both parties within the next two weeks.

DATED New York, N. Y.
August 30, 1957

BERNHARD ALTMANN TEXAS CORPORATION

By: Wolf H. H. Plecher

LOCAL NO. 590 INTERNATIONAL LADIES GARMENT WORKERS' UNION

By: Louis Stulberg

[fol. 179] BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 3

THIS AGREEMENT MADE AND ENTERED INTO THIS 12 day of OCTOBER, by and between BERNHARD ALTMANN TEXAS CORPORATION, with its place of business at SAN ANTONIO, TEXAS, and its successors and assigns, hereinafter designated as the "Employer", and LOCAL # 590, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, said Local being an unincorporated association and hereinafter designated as the "Union", for and behalf of itself and the employees now employed or hereafter to be employed by the Employer.

WITNESSETH:

WHEREAS, the Employer represents that it is engaged in the making of sweaters; and

WHEREAS, the workers employed by the Employer in the bargaining unit have duly designated the Union as their exclusive bargaining representative for the purpose of collective bargaining with the Emp'oyer with respect to rates of pay, wages, hours and othe conditions of employment; and

WHEREAS, the parties desire to cooperate in establishing conditions which will tend to secure a living wage, improved working conditions and fair competition insofar as labor cost is concerned, and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the parties;

[fol. 180] NOW, THEREFORE, in consideration of the mutual promises and obligations herein assumed and contained and other good and valuable considerations, the parties agree as follows:

ARTICLE I: OBJECTIVES

It is mutually recognized that the primary objective of both parties in entering into this agreement is the promotion of orderly and peaceful relations and the achievement

of efficiency and uninterrupted production in the shop. This agreement sets forth the rights and obligations of each party to the other party. It establishes a foundation for the demonstration of a mutually cooperative spirit wherein the parties agree that they have an interest and an obligation in the welfare of the industry in which they are engaged. Each party obligates itself to do everything possible to eliminate needless controversies and to promote economic and industrial harmony, and undertakes in good faith to carry out and comply with the terms of this agreement, both in letter and in spirit.

ARTICLE II: UNION RECOGNITION

The bargaining unit covered by this agreement consists solely of all non-supervisory production and shipping department workers employed by said Employer, excluding among others mechanics, machinists, designers, sample department employees, cafeteria employees, time study employees, plant clericals, guards, watchmen, truck drivers, engineers, maintenance men, and janitors. It is agreed that [fol. 181] the Union represents a majority of such workers and that it shall be the sole and exclusive bargaining representative for all workers in the bargaining unit during the entire period of this agreement. This agreement shall apply only to employees within the bargaining unit. Neither the Employer nor any of its agents shall directly or indirectly discourage membership in the Union.

ARTICLE III: UNION MEMBERSHIP

1. All new employees shall upon their employment be informed by the Employer of the existence of this agreement and the terms thereof and advised by the Employer that, in its opinion, good Labor-Management relations are and will be best served and promoted if such workers become and remain members of the Union after a trial period of sixty (60) days' employment by the Employer.

2. The Employer agrees to implement and promote the above by posting copies of the following "Notice" near all time clocks and at other prominent places such as Bulletin Board in the shop or shops:

"NOTICE TO ALL EMPLOYEES"

"This shop is being operated under the terms of an Agreement with a local of the International Ladies' Garment Workers' Union, AFL-CIO. All wages, hours and other conditions of employment are regulated by the terms of this Agreement, and good Labor-Management Relations will be best served and promoted, in [fol. 182] our opinion, if all our employees covered by this Agreement become and remain members of this Union.

"Signed.....

"Name of Employer....."

ARTICLE IV: TRIAL PERIOD

Newly hired workers shall after a trial period of sixty (60) days be considered regular employees of the Employer and shall be entitled to all rights, privileges and benefits of regular employees under this agreement. During said sixty (60) day trial period, the worker may be discharged by the Employer for any reason whatever in its discretion, and such discharge shall not be subject to grievance procedure or arbitration.

ARTICLE V: CHECK-OFF

1. Subject to the requirements of law, including authorization and assignment by the workers individually, the Employer agrees to deduct membership dues (which shall be deemed to include periodic fixed dues, initiation fees, and assessments) from the earnings of Union employees as directed by the Union and transmit the same to the Union monthly.

2. Such authorization and assignment shall be irrevocable for one (1) year, or until the termination of this agreement, whichever occurs sooner, and shall be automatically renewed and shall be irrevocable for successive periods of one (1) year each or for the period of each succeed- [fol. 183] ing applicable collective agreement between the Employer and the Union, whichever shall be shorter, unless the employee gives written notice of revocation to the

Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Employer and the Union, whichever occurs sooner.

3. The Union agrees to furnish the Employer with signed authorization from each Union member for the deduction above referred to, and the Employer shall not be required to make deductions until receipt thereof.

4. It is mutually agreed that the amount of membership dues owed by any Union employee of the Employer to the Union is a matter concerning only the individual employee and the Union, and the Employer assumes no obligation or authority whatever in the settlement of any such dispute or question that may arise.

5. The Union will indemnify and hold the Employer harmless from any claims, charges or demands made against the Employer by reason of any deductions or payments made by the Employer pursuant to this ARTICLE.

ARTICLE VI: HOURS—OVERTIME

The standard hours of employment shall be forty (40) hours per week and overtime shall be paid as required by the Fair Labor Standards Act. The Employer shall have the right to operate the plant on the basis of four shifts without any shift differentials. If there is a fourth shift [fol. 184] in effect up to December 31, 1957, work performed on Sundays shall be paid for at the straight-time rates. After January 1, 1958, work performed on Sundays shall be paid for at the rate of time and one-half.

ARTICLE VII: WAGES AND STANDARDS

1. Each employee working on September 3, 1957, shall receive a wage increase of five (5%) percent effective as of that date as hereinafter set forth. All time work rates shall be increased by said five (5%) per cent. In the case of piece workers, the said five (5%) percent shall be paid on top of their piece rate earnings. After a reasonable period, the Employer may take up with the Union the question of

incorporating said five (5%) percent into the piece rates. In the event of any disagreement, the matter shall be treated as a dispute under ARTICLE XXVI.

2. After completion of the trial period of sixty (60) days, all employees shall receive a minimum wage of no less than One Dollar and Ten Cents ($1.10) per hour.

3. The present piece rate for toppers shall be negotiated between the parties, written notice thereof having been given to the Employer by the Union before October 1, 1957. If the parties are unable to agree, the matter shall be arbitrated under ARTICLE XXVI, provided the Union requests such arbitration prior to November 1, 1957. Any increase agreed to by the parties or awarded by the arbitrator shall be retroactive to September 3, 1957.

[fol. 185] 4. Piece rates for new or modified items, products, styles, designs or operations, or for new methods of work resulting from changes in processes, production or equipment shall initially be fixed by the Employer, subject to the Union's right to review the same. If a written complaint is made by the Union with respect thereto within thirty (30) days after the institution of such rates, the matter shall be negotiated between the parties. In the event of any disagreement the matter shall be treated as a dispute under ARTICLE XXVI. Any increase agreed to by the parties or awarded by the arbitrator shall be retroactive to the initial inception of the rates.

5. During the term of this agreement, wages and piece rates now existing or hereafter established in the Employer's shop shall not be lowered. However, as to rates hereafter established and in force for less than thirty (30) days, the Employer may review the same and set a lower rate than the one initially instituted, provided, however, that such resetting occurs no later than thirty (30) days after the rate is initially instituted and the Union is immediately advised thereof in writing. Such reset rate shall thereupon be subject to the Union's right to review the same in accordance with the procedure set forth in Paragraph 4 above.

6. There shall be one uniform system of work, that is time work or piece work, for each craft in the shop. No change of system may be effected without the consent of the Union. In the event of any disagreement, the matter shall be treated as a dispute under ARTICLE XXVI.

[fol. 186] 7. The Employer may grant merit, length-of-service, or other individual increases or adjustments only upon approval by the Union.

ARTICLE VIII: DISCHARGES AND DISCIPLINE

No worker shall be discharged or otherwise disciplined without good and sufficient cause, except during his trial period. In case of any dispute regarding a discharge or disciplinary action, the matter shall be treated as a dispute under ARTICLE XXVI. If the Union challenges the justification for the discharge or disciplinary action, it must give notice thereof within five business days after such discharge or disciplinary action, or else the same shall be conclusively deemed to have been made for good and sufficient cause. Arbitration of such disputes shall be expedited. An employee who is discharged or suspended shall thereupon leave the premises, but if the discharge of disciplinary action is found to be unjustified, the arbitrator may direct that the worker be compensated for the loss of his earnings during the period of such discharge or disciplinary action.

ARTICLE IX: DISTRIBUTION OF WORK

1. At all times work shall be distributed among the workers in each department on an equal and equitable basis, subject to ARTICLE XXI.

2. No member of the Employer or supervisory employee shall perform any work in any craft that is required in the making of the Employer's product, if the same causes or extends a lay-off of any worker.

[fol. 187] 3. If a worker has been laid off and any member of the Employer or supervisory employee does his work, the Employer shall reimburse the worker so laid off for his loss of earnings and shall immediately reemploy him.

ARTICLE X: CHAIRMAN OR CHAIRLADY—COMMITTEE

There shall be a Shop Chairman or Chairlady and Committee selected by or under the auspices of the Union.

ARTICLE XI: DAMAGED GOODS

The Employer shall not charge workers for damage to material unless caused wilfully or by gross neglect.

ARTICLE XII: ASSIGNMENT TO OTHER WORK

1. A worker who is requested to perform work other than his regular work while his regular work is available shall receive for such other work not less than his average hourly earnings in his regular work during the last complete quarter prior to the change.

2. A worker may be assigned to perform work other than his regular work while his regular work is unavailable and shall receive for such other work the established time or piece rate therefor, or at the Employer's option, a guaranteed rate mutually agreed on with the Union, but in no event less than the minimum provided in this agreement. The worker, however, shall have the right to go home instead of doing such work.

[fol. 188] 3. A permanent transfer of a worker while his regular work is available shall not be made without the consent of the Union. In the event of any disagreement, the matter shall be treated as a dispute under ARTICLE XXVI.

ARTICLE XIII: HOLIDAYS

1. The following holidays shall be observed and all employees who have completed their trial period shall be paid for them regardless of whether such holidays fall on a working or non-working day of the week or in any non-working week:

Labor Day (During 1957 Thanksgiving Day is substituted for Labor Day)
Christmas Day
Fiesta Day

2. An employee shall be ineligible for holiday pay if he has been laid off or is otherwise absent from work for thirty (30) consecutive days immediately before the holiday plus thirty (30) consecutive days immediately after the holiday. An employee shall also be ineligible for holiday pay if, while work is available, he fails to work either the working day before or the working day after the holiday unless such absence is for justifiable cause.

3. Holiday pay for each piece worker shall be calculated at his average hourly earnings during the last complete quarter prior to the holiday. Holiday pay for each time worker shall be calculated at his current rate.

[fol. 189] 4. In the event work is performed on any such holiday, it shall be paid for at straight time in addition to the holiday pay, but any worker has the right not to work on any such holiday.

ARTICLE XIV: RIGHT TO LEAVE SHOP—CALL-IN TIME

1. Workers shall not be required unreasonably to remain in the shop during the day when there is no work for them. All workers who are requested or permitted to report for work shall be supplied with at least four (4) hours' continuous work or be paid therefor. In such event the Employer may assign the worker to any work it desires, but the worker shall be paid at his average hourly earnings during the last complete quarter.

2. Posting of a notice in the department or oral notice to the worker before the end of a shift advising the worker not to report the next day shall be sufficient notice to preclude the obligation of call-in time. Notice shall not be required and call-in time shall not be paid if lack of work or inability to give notice is due to physical conditions beyond the Employer's control including without limitations fires, storms, floods or failure of power.

ARTICLE XV: HEALTH AND WELFARE FUND—HOSPITAL AND SURGICAL POLICY

1. The Employer shall pay monthly to the San Antonio ILGWU Health and Welfare Fund to support the San

Antonio Garment Workers Medical Survey Clinic, a sum [fol. 190] equivalent to one and one-quarter (1¼%) percent of its total gross monthly payroll (before deduction for Federal or State taxes) of all employees covered by this agreement (whether regular or trial period workers), payment to be made through the office of the Union. Said Fund is a trust fund established by collective agreement prior to January 1, 1947 and maintained in trust for the purpose of providing (or purchasing insurance to provide) health, welfare, death, and recreation benefits or services and such other benefits as may be provided to employees of contributing firms under the Rules and Regulations of said Fund: said Rules and Regulations being hereby incorporated into this agreement as a part thereof by reference. The payments made hereunder by the Employer shall not constitute or be deemed wages due to the workers.

The Fund shall continue to be maintained and administered in accordance with the By-Laws or Rules and Regulations adopted for the Fund or as the same may be amended.

The Fund shall be held and administered by a Board of Trustees composed of Union representatives and an equal number of representatives of employer contributors to said Fund.

An annual audit of the Fund shall be made, a statement of the results of which shall be available for inspection by interested parties as the principal office of the Fund.

Neither the Employer nor any individual employee shall have any right, title or interest in, or claim against the Employer's payments toward the Fund, or against the [fol. 191] Fund except as may be provided by said By-Laws or Rules and Regulations for the Fund.

No payment made into the Fund shall be used for purposes which exceed the purposes of the law applicable to such Funds.

In the event that payments hereunder shall be held by the United States Treasury Department not to be a deductible expense for income tax purposes, the Employer may discontinue such payments. The Employer shall not be liable or responsible in any manner for the operation or maintenance of such Clinic, and its liability shall be limited to payment of the amounts specified in this ARTICLE.

2. The Employer shall maintain the existing hospital confinement and surgical benefits policy upon condition that an employee may be covered thereby by paying one-half the cost and the Employer shall pay the other one-half. Dividends or rebates from the insurance company shall be divided equally between the Employer and the covered employees. The Employer may deduct from wages the employee's share of the premiums.

ARTICLE XVI: SANITATION—INDIVIDUAL CONTRACTS—SECURITY—SUB-CONTRACTING

1. The Employer shall maintain proper sanitation and ventilation standards in its shop or shops at all times, and shall comply with all laws relating thereto. The Shop Chairman or Chairlady and Committee will cooperate in enforcing this provision.

[fol. 192] 2. The Employer shall not enter into individual contracts with any of its workers, nor shall the Employer accept security from any of its workers.

3. There shall be no sub-contracting by any employee in the shop.

ARTICLE XVII: APPLICATION OF AGREEMENT—WORK OUTSIDE OF SHOP

1. The terms of this agreement shall apply to the shop specified in this agreement and to any other shop or shops operated by or for the Employer in San Antonio engaged in the production of the same general line of apparel.

2. The Employer shall have no work normally performed inside its own shop performed outside of its own shop unless the workers of its inside shop are fully supplied with work.

ARTICLE XVIII: VACATIONS

A vacation period during June, July, or August shall be set by the Employer after consultation with the Union prior to May 1st. All workers employed for less than five (5) years by such June 1st and who have worked at least 1000 hours but less than 1600 hours in the twelve months prior to such June 1st shall receive three (3) days' paid

vacation. All workers employed for less than five (5) years by such June 1st and who have worked at least 1600 hours in the twelve months prior to such June 1st shall receive one (1) week's paid vacation. All workers employed for five (5) years or more by such June 1st and who have [fol. 193] worked at least 1000 hours but less than 1600 hours in the twelve months prior to such June 1st shall receive one (1) week's paid vacation. All workers employed for five (5) years or more by such June 1st and who have worked at least 1600 hours in the twelve months prior to such June 1st shall receive two (2) weeks' paid vacation. Vacation pay shall be calculated on the worker's average hourly earnings during the preceding year in the case of piece workers, and on his rate prevailing on such June 1st in the case of time workers.

ARTICLE XIX: STRUCK WORK

The Employer after written notice from the Union shall not perform any work for or give any work to any concern against which a strike has been declared, and in no event shall it request any of its employees to perform work destined directly or indirectly for such concern. Such work shall not be deemed in the worker's regular course of employment, and the workers need not perform such work.

ARTICLE XX: EXAMINATION OF BOOKS

The Employer shall, upon request by the Union, submit the payroll books and other pertinent records for examination at the Employer's plant for the purpose of ascertaining whether the Employer has complied with the terms of this agreement. The failure of the Employer to submit such books and records shall be presumptive evidence of the violation complained of and shall justify sustaining the Union's complaint.

[fol. 194] ARTICLE XXI: LAY-OFF AND REHIRING

1. The Employer may lay off workers in the manner hereinafter provided. In the event of a reduction of force in any department for any reason, the workers shall be laid off in inverse order of seniority in such department,

provided, however, that the worker retained can perform the work satisfactorily. Upon resumption of work, the workers shall be rehired in reverse sequence, i.e., the last laid off shall be the first rehired. Seniority status shall not be affected by law-off except as hereinafter provided.

2. Any employee laid off for six (6) continuous months, or who is absent because of illness or any other reason for six (6) continuous months, shall lose his seniority and status as an employee and shall not be entitled to rehiring. Any laid-off employee who does not return to work within five (5) days after the Employer has mailed to such employee at his last known address a notice to return shall lose his seniority unless such failure to return to work is for justifiable cause.

ARTICLE XXII: ACCESS TO SHOP

Representatives of the Union shall have access to the shop of the Employer during business hours for the purpose of taking up complaints and for the purpose of ascertaining whether the terms of this agreement are being complied with. The representative shall notify the office before entering the plant, and shall not interfere with or interrupt the work of employees.

[fol. 195] ARTICLE XXIII: AGENCY

The Employer agrees that the sole person authorized or having the power to act as agent of the Union, or to bind the Union legally with respect to matters arising out of this agreement or arising out of the relations between the Employer and the Union, or to subject the Union to any liability whatever by reason of any act or omission is the Regional Director of the Union or the Business Agent servicing the shop (or such substitute or additional persons as the Union may hereafter formally designate by written notice to the Employer). The Union shall not be responsible for the acts or omissions of any other persons, including members and employees of the Union. The Employer further agrees that the Union, in entering into or administering this agreement, is not an agent of or acting on behalf of the International Ladies' Garment Workers'

Union, and that in no event shall the latter be bound by or liable under this agreement or be otherwise liable.

ARTICLE XXIV: CROSSING PICKET LINE

It shall not be considered a breach of this agreement on the part of the Union or on the part of any invidual employee if any employer or employees refuse to cross a picket line recognized by the Union, or to enter upon the picketed premises of the Employer or other concern, either of their own volition or by direction of the Union, nor shall such refusal be cause for discharge or discipline.

[fol. 196] ARTICLE XXV: NO-STRIKE, NO-LOCKOUT PLEDGES

The Union agrees that it will not call, authorize or ratify a strike, slowdown or stoppage during the life of this agreement, except for the employer's failure to submit to arbitration or to comply with the decision of an arbitrator. Should an unauthorized strike, slowdown or stoppage of work by Union members occur, the Union's sole obligation shall be to endeavor in good faith, within twenty-four (24) hours after receipt of written notice thereof from the Employer, to bring about the return to their work of its members who have stopped work and to instruct them to return to work immediately. Upon the failure of any employees to return to work within said twenty-four (24) hour period, the Employer may at its option consider that such employees have abandoned their employment and may discharge them. Compliance by the Union in good faith with this provision shall be deemed full compliance with the Union's obligation hereunder.

The Employer agrees that it will not order, authorize or ratify a lockout during the life of this agreement. Should a lockout occur, the Employer's sole obligation shall be to endeavor in good faith, within twenty-four (24) hours after receipt of written notice thereof from the Union, to terminate the lockout and to reemploy the employees. Upon the failure of the Employer to do so within said twenty-four (24) hour period, the Union at its option may [fol. 197] treat the matter as a dispute to be determined under the machinery for adjustment of disputes, as pro-

vided in this agreement, or may consider that the Employer has forfeited its rights under the agreement.

ARTICLE XXVI: ADJUSTMENT MACHINERY—COURT ACTIONS BARRED

1. Any and all disputes, complaints, controversies, claims or grievances whatsoever between the Union or any employee and the Employer, which directly or indirectly arise under, out of, or in connection with or in any manner relate to this agreement or the breach thereof, or the acts, conduct or relations between the parties shall be adjusted as follows:

(a) The aggrieved employee or employees must bring the matter to the Union Committeeman who together with the Shop Chairman or Chairlady shall attempt to settle the matter with the Plant Manager or Production Manager or their designated representative.

(b) If the matter is not thus settled, the aggrieved employee or employees shall fill out and sign two copies of the regular grievance form supplied by the Union, stating in full the nature of the grievance or dispute. This form shall be referred to the Shop Chairman or Chairlady and Committee who shall serve a copy thereof on the Employer. A conference to settle the matter shall be held within forty-eight (48) hours thereafter, attended by the Shop Chairman or Chairlady and Committee and a Representative of [fol. 198] the Union who may be a non-employee of the Employer, and the Plant Manager or Production Manager or their designated representative. Such conferences and all other grievance procedures shall not normally be held during working hours, and in no event shall the Employer be required to pay for the time of any employees or the Shop Chairman or Chairlady or Committeemen in connection therewith.

(c) If the parties nevertheless fail satisfactorily to dispose of any such dispute, complaint, controversy, claim or grievance, or if the matter does not lend itself to the foregoing procedure, or if for any reason it has not been taken up by them, the matter shall be submitted to arbitration before Mr. Leo Guzik who shall be the arbitrator under

this agreement. The award or decision of the arbitrator, in addition to granting such other relief as the arbitrator may deem proper, may contain provisions commanding or restraining acts and conduct of the parties. Any award or decision of the arbitrator shall be final and binding and shall be enforceable by appropriate proceedings in law or in equity. The taking of the oath by the arbitrator is hereby expressly waived. His fee shall be borne equally by the parties hereto.

2. It is the intention and agreement of the parties that the procedure herein established for the adjustment of disputes shall be the exclusive means for the determination of all disputes, complaints, controversies, claims or grievances [fol. 199] whatsoever, including claims based upon any breach of this agreement. It is intended that this provision shall be interpreted as broadly and inclusively as possible. Neither party shall institute any action or proceeding in court of law or equity, state or federal, other than to compel arbitration, as provided in this agreement, or to enforce the award of an arbitrator. This provision shall be a complete defense to any action or proceeding instituted contrary to this agreement.

ARTICLE XXVII: CHANGE IN LEGAL MINIMUMS

Should Federal or State legislation become effective, increasing the minimum wages under the law to One Dollar and Fifteen Cents ($1.15) per hour or less, it is agreed that the minimum wages under this agreement shall be at least ten (10¢) cents an hour above the law's requirements. Should the minimum wages under the law be increased above One Dollar and Fifteen Cents ($1.15) per hour, the minimum wages under this agreement shall be discussed between the Employer and the Union, but shall not be subject to grievance procedure or arbitration.

ARTICLE XXVIII: INFORMATION

The Employer shall furnish to the Union monthly the names and addresses of all newly hired workers and dates of hiring, the names of all terminated workers and dates of termination. The Employer shall also furnish the Union

quarterly the average hourly earnings of all workers individually and by department classification.

[fol. 200] ARTICLE XXIX: CONFORMITY TO LAW-SAVING CLAUSE

1. If any provision or the enforcement or performance of any provision of this agreement is or shall at any time be contrary to law, then such provision shall not be applicable or enforced or performed, except to the extent permitted by law. If at any time thereafter such provision or its enforcement or performance shall no longer conflict with law, then it shall be deemed restored in full force and effect as if it had never been in conflict with the law.

2. If any provision of this agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby.

ARTICLE XXX: TERM

This agreement shall go into effect as of the 3rd day of September 1957, and shall continue in effect until the 31st day of December 1959, and shall thereafter automatically be renewed from year to year unless either party shall notify the other party in writing at least sixty (60) days prior to any such expiration date that it desires to change or modify the terms thereof.

In Witness Whereof, the parties have hereunto set their respective hands and seals, and caused this agreement to [fol. 201] be signed by their respective officers the day and year first above written.

Bernhard Altmann Texas Corporation

By /s/ Wolf H. H. Plecher

Local # 590 International Ladies' Garment Workers' Union

By /s/ S. C. Chaikin

[fol. 202]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 4*

August 31, 1957

	Richard A. Simon	23	*Celia Zamudio Flores*
	Frank H. Robbins	24	*Mary A. Mendoza*
	Thomas Kovalski	25	*Ella W. De Viney*
	Andrew Gonzales	27	*Nora V. Felan*
	Thomas Covelski	29	*Elena S. Longoria*
	Rudy V. Lopez	35	*David Max Crowe*
	Herschel E. Fix	45	*Bruno W. Meyer*
	Herbert Lemes	56	Hercilia Olivares
	Gilberto Hernandes	63	Sophie D. Terres
	James Lohso	70	Rudolpho Saenz
	Melan D. Oestreich	71	*Kathryn B. Herlong*
	Careio B. Stricklen	72	*Alice G. Morrison*
	Doris LaVerne Burnett	73	*Elisa Sanchez*
	Horase G. Potts	79	Elena Arrambide
	Sam Liberto, Jr.	80	Romelia R. Rios
	Gertrad Plecher	81	Dorothy Applewhite
	Bertie J. Dodds	82	Mary M. Luna
	Janet Lieske Wrenn	84	Pablo G. Rodriguez
	Burnette Juares	94	Mary Louise Mejia
	Stella Gonzales	95	Esther G. Gonzales
	Ruth E. Stanteen	98	Antonia H. Sescho
	Ruth A. Hopkins		(Formerly Patino)
	Fernando C. Rejada	102	Ninfa M. Escamilla
	Erma H. Byron	110	*Tommie L. Dotrav*
	Robbie R. Lewellyn	113	*Robert N. Chaddock*
	Laura S. de Saens	114	*Lemuel C. Gay*
	Sarah Bishop	116	*James C. Anderson*
2	*Marcus Cuzman*	117	*Howard B. Still*
3	*Alfonso Medrano*	118	*Pilar M. Ribera*
6	*Gregoria Gaitan*	126	*George W. Lagus*
7	Minnie Escamilla	131	Alice Devora
13	*Olivia Villa*	132	Isabel A. Cuellar
14	*Carmen Guadiano*	133	*Margarita Huisar*
18	*Moszek Rogalski*	134	Robert Rossett
21	*Lydia Hune*	151	*Albert V. Morin*

* Italicized names are encircled on original exhibit.

[fol. 203]

152 Ignacio Martinez
153 *Horst J. Trenz*
154 Leonardo Torres
155 *Antonio E. Torres*
158 *Anthony M. Plata*
159 Felipe Garcia
163 Humbertò H. Arredondo
164 Josephine Gaytan
165 Sarah H. Guzman
(Formerly Novares)
168 Robert I. Vargas
171 Juan G. Arocha
172 Rey Ruiz
174 Antonio L. Ortiz
177 George C. Araujo
178 Lupe J. Hernandez
195 Frank Ruis
220 Antonia Beltran
221 Maria de Jesus Mathey
222 Julia M. Picon
224 Armendina Garcia
225 Pura G. Flores
226 Maria Medrano
227 Modesto M. Hernandez
229 Gregoria D. Calville
232 Ramona O. Balderas
233 Victoria Gonzales
234 Ninfa A. Gonzales
237 Rose M. Davila
238 Petra Murille
240 Josephine V. Montoya
248 Mamie Cardena
256 Bertha E. Zuniga
262 Felipe R. Villarreal
263 Cuca M. Garza
381 Paula M. Barrera
382 Virginia I. Rodriguez
385 Minerva M. Morado
386 Angela R. Trevino
(Formerly Rodriguez)
387 Ninfa P. Balderas
390 Olivia Aguinaga
392 Bennie Gonzales
397 Paulette Gonnet
400 Frances P. Gonzales
405 Hortencia Hernandez
406 Pauline G. Herrera
409 Mary Z. Gonzales
410 Guadalupe V. Castillo
441 Antonia P. Carego
413 Lidia Salazar
418 Mary L. Garcia
419 Elvira P. Sunigo
421 Felicita Limon
422 Juana G. Padilla
434 Helen M. Riojas
435 Gregoria R. Galindo
436 Carlota Rabazo
438 Caroline T. Moncada
439 Olivia M. Rodriguez
444 Guadalupe Silva
445 Elva Hernandez
446 Bernalda Zamora
447 Concepcion Delgado
449 Alicia M. Osorio
451 Linda S. Molina
454 Juanita Hernandez
461 Elia G. Ortiz
463 Olga Z. Morales
465 Jessie A. Salinas
466 Maria Garcia Garza
467 Thayde Pazuengo
478 Rosa P. Valerio
482 Bertha Garcia
483 Ofolia V. Vargas
486 Cristina G. Solis
492 Irene M. Perez
493 Teodora S. Rodrigues
612 Vidal Galindo
613 Ernest C. Gonnet

[fol. 204]

614 Dolores B. Hernandez
615 Betty J. Addington
617 Mary M. Lucio
618 Celia B. Munis
623 Santes Castillo
624 Roger C. Gonnet
625 Juan Flores Ledesma
627 Antonio S. Barbesa
628 Reynaldo V. Reyes
629 Ramon Vera
632 Pedro T. Gomez
634 Florinda Martinez
633 Pedro A. Aguirre
636 Carlos G. Garza
640 Rita A. Ledesma
644 Florentino C. Segovia
681 Buriqueta Barrera
683 Adela E. Gil
687 Santos Valesquez
688 Lupe R. Valdes
692 Elma Puente
696 Josefa Robles
697 Mattie W. Gonzales
698 Bertna C. Morales
701 Maria De Luna
704 Willa L. Bell
706 Mary C. Ortega
711 Claudia L. Martinez
715 Dismantina N. Robles
717 Elvira Picos
718 Genovaba Rossies
721 Bertenzia Martines
725 Eleuteria Eng
726 Guadalupe P. A
727 Rafaela A. Paes
728 Conzuelo Sanchez
729 Mary B. Pritchard
730 Maria C. Montes
732 Mary L. Medellin
733 Paula C. Lopes
734 Tomasa M. Viera
736 Josephine Gloria
738 Olive K. Rivera
739 Jovita Hernandes
745 Emlalia S. Escamilla
746 Guadalupe Madrigal
747 Romana Folis
748 Lillie G. Jase
750 Eunice Rodriguez
756 Cecilia Martines
757 Elida S. Franco
881 Mary Alvares
882 Gertrudis Rodriques
883 Benita Cardenas
885 Bertha Salazar Munoz
886 Paulita Beltran
887 Elodia L. Muro
888 Mercedes Moira
890 Gloria M. Aguilera
891 Josephine M. Sanches
897 Ofelia F. Ruis
898 Mary G. Perez
899 Eva T. Devora
900 Guadalupe Cuellar
902 Prudencia B. Cortes
903 Carmen G. Armenta
904 Adela G. Campos
905 Teresa T. Medina
907 Mario J. G. Delgado
908 Calia M. Luna
910 Dolores Loera
912 Retner B. Medellin
913 Escuela P. Weiser
915 Emma E. Perez
917 Lydia H. Flores
921 Dora Galvan
922 Paula Valle
923 Herminia O. Trevino
924 Eugenia Rodrigues
925 Evangelina Nesues

[fol. 205]

928 Herlinda F. Vera
936 Julia C. Contreras
Thomas O. Teleman
William Herbert
Annette W. Stillwell
Patsy Jo Conally
Emma O. Poppin
19 *Nicolas Rodrigues*
26 *Ella G. Williams*
28 *Otilia T. Ortis*
33 *Lupe G. Salsa*
64 Irene G. Alexandro
76 Romana R. Rodrigues
85 Theodora Cadena
88 Tony Orosco
89 Prenciliano Martines
90 Antonia Z. Gonzales
91 Beatrice O. Castillo
93 Francisca de la Garza
97 Frances de la Torre
99 Mary Sielzki
100 Bridget Rolston
103 Lois W. Leonard
105 Guadalupe Balderrera
107 Herlinda Salezar
108 Margaret Vasques
120 *Johnnie Mae Ware*
122 *William O. Sill*
125 *Loyd Spencer, Jr.*
130 *Alfred C. Munos*
139 Doris Villarreal
111 *Roscoe Ware*
156 Santiago L. Valdez
161 Edward Barrera
162 Johnny Martines
167 Frank Samudio
169 Cristobal Arias
173 Oscar M. Banda
216 Raul V. Huizar
236 Estela M. Garcia
239 *Margaret Gonzales*
241 Dominga C. Martines
249 Mary M. Ortiz
250 Angie Q. Domingues
251 Christopher S. Oliva
255 Augustine D. Longoria
260 Blasa M. Ibarre
261 Esperanza C. Moran
265 Carlos B. Hernandez
266 Hector G. Garcia
268 John S. Torres
269 Martin A. Ortiz
270 Roque P. Ruiz
271 Robert I. Phelps
272 Bernard F. Kevalski
274 James R. Clark
275 Donald M. Natala
277 Wayne D. Martin
279 Armando Arrambide
282 William Letcher
283 Francisco R. Moreno
384 Guillerma Villarreal
386 Marina Rodrigues
424 Isabel M. Martines
425 Sylvia Cardenas
430 Consha R. Ramires
432 Mary R. Molina
441 Crescencia Trevino
442 Edelia V. Sanchez
450 Stella S. Molina
459 Elida M. Ayala
462 Maria E. Hernandes
468 Jesusita Galan
469 Martha Saens
470 Sadio M. Almaguer
473 Laura O. Garza
475 Carmen Zamora
477 Anita Franco
481 Altagracia A. Enriques
488 Teodula Ramos

[fol. 206]

489 Dorothy N. Hernandez
490 Antonia Ledeama
491 Luisa A. Lopes
494 Eudelia Galindo
496 Mary L. Hernandes
497 Blanche A. Martines
500 Mary Cora Medina
501 Lupe F. Hernandes
502 Angelina M. Maneillas
503 Hermelinda L. Carrillo
611 Manuel Segura Jr.
616 Rita F. Salomon
622 Hermenia V. Guerra
631 Mike V. Contreras
707 Elizabeth C. Duron
709 Maria N. Castilla
710 Maria Badillo
712 Aristez M. Guardia
735 Marina Moreno
737 Petra C. Galindo
751 Carolina Carreon
754 Maria Eugenia Sanches
758 Aurelia L. Villarreal
759 Mary C. Martines
761 Emilia Saens
762 Clotilda M. Tames
763 Alicia S. Munos
889 Margaret G. Barrientes
894 Concepcion Mendoza
895 Velia Solis
896 Estela Z. Davila
914 Manuela Bernal
916 Rosa Rodrigues
918 Loyce B. Lovell
920 Isabella N. Lopes
927 Maggie M. Harris
930 Consuelo G. Rivas
931 Lupe V. Chatman
932 Alice S. Solis
437 Victoria D. Valdes
760 Lofland Flores
140 Willie R. Vogues
633 Andrea L. Gomes
637 Pauline G. Robledo
638 Juan Cantu Jr.
639 Neil G. Mendiola
645 Raul Gonzales
690 Bertha V. Valdez
693 Lupe C. Robles
699 Selestine Lopez
700 Luisa Mores

[fol. 207]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 5

2/13/58

PERSONS PAID ON JULY 27, 1957 PAYROLL BUT NOT APPEARING ON AUGUST 31, 1957 PAYROLL

55 Susie Romo
86 Carlota Sanchez
87 Helen Martinez
106 Janies Salazar
157 Robert Beltran
175 Pete Silva
176 Mateo Sanchez
218 Victoria Cruz
219 Susie Rios
231 Petra Martinez
242 Ruth B. Hernandez
243 Mary L. Chaves
244 Dora L. Reyes
245 Adelina Chapa
247 Consuelo Felan
252 Cirilda C. Lozano
254 Ruben Davila
383 Carrie P. Ruiz
417 Isabel R. Mercado
426 Ofelia Hernandez
429 Mary Baez Banda
448 Sira Ramirez
452 Concepcion Reyna
453 Julia Moreno
460 Luz Garcia
471 Susie Cruz
474 Carmen Rodriguez
479 Enemecia A. Lara
487 Maria de Jesus Torres
495 Josephine Valencia
498 Petra Castillo
619 Luiza Maldonado
620 Aurora Contreras
642 Joe Lopez
643 Michael Chapa, Jr.
689 Mary Helen Tejeda
691 Lily M. Maldonado
702 Petra Garza
705 Stella Faz
708 Antonia T. Hernandez
713 Lily Wilburn
714 Emelia Flores
716 Juanita Romo
719 Velia Tamez
720 Concha Huron
722 Juanita Vasquez
929 Josefina Flores
207 Joe R. Vidaurri
208 Fernando F. Bustamante
209 Eugene Devora
210 Pablo Rabago
211 Bernardo N. Lugo
212 Rudy M. Villegas
253 Juan E. Escamilla
258 Andrew B. Cianeros
259 Oscar R. Villa
179 Jorge M. Cantu
180 Dionicio P. Luna
181 Thomas P. Almaraz
182 Emilio Baez, Jr.
183 Manuel Cuellar
184 Paul F. Gonzales
185 Salvador R. Gonzales
186 Jaime R. Juarez
187 Juan Almaraz
188 Hilario H. Rios
189 Paul R. Villa

[fol. 208]

190 Pedro de Luna
191 Henry Rodriguez
192 Fred L. Reyes
193 Alberto M. Rodriguez
194 Frank R. Hernandez
196 Felipe Mata
197 Arnulfo G. Reyes
198 Nicolas Gonzales
199 Severo Rodriguez
200 Aurelio Guillen
201 Guadalupe Z. Rojas
202 Jesse S. Benitez
203 Alberto Chavez
204 John Longoria
205 Daniel Rodriguez
214 Martin F. Vargas
215 Ernest Rivera
8 Jesus M. Ayala
52 Frank Q. De Leon
53 Arthur Vasquez
54 David Gomez
160 Henry de Luna
414 Martha Balderas
404 Irene Bustamente
412 Abelardo E. Calderon
440 Cipriana Briseno
433 Juanita Prado
431 Susie M. Garcia
428 Eloisa Valdez
416 Adelina B. Alvarez
427 Frances Herrera
415 Oralia T. Carrillo
407 Lilly Vega
403 Ramona B. Oliva
402 Herminia R. Ruiz
401 Frances Cantu
399 Carmen L. Avina
398 Felisa Rodriguez
396 Paula R. Lopez
395 Georgia T. Diaz
394 Zoila M. Guantes
391 Mary Ann Sendejo
443 Mary E. Vasquez
420 Estella M. Meza
476 Consuelo P. Kelly
393 Adelina F. Ramon
389 Lidia F. Silva
62 Anita Hernandez
78 Margarito O. Barrera
61 Cecilia Villa
223 Juanita M. Reyes
Manuel Ochoa
Mariano Zuniga

[fol. 209]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 9

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Cases No. 39-CA-691
39-CA-729
39-CA-736
39-CA-737
39-CA-738

In the Matter of

BERNHARD-ALTMANN TEXAS CORPORATION

and

LOYCE LOVELL, JOHN S. TORRES, JULIA C. CONTRERAS, IRENE PEREZ, MINNIE ESCAMILLA

and

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

Party to the Contract

Cases No. 39-CB-191
39-CB-213
39-CB-219
39-CB-220
39-CB-221
39-CB-222

In the Matter of

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

and

LOYCE LOVELL, JOHN S. TORRES, IRENE PEREZ, MINNIE ESCAMILLA, JULIA C. CONTRERAS, NINFA M. ESCAMILLA

and

BERNHARD-ALTMANN TEXAS CORPORATION

Party to the Contract

[fol. 210]

STIPULATION OF TESTIMONY

It is hereby stipulated and agreed by and between the International Ladies' Garment Workers' Union, AFL-CIO, by their attorney, Charles Morris; the Bernhard-Altmann Texas Corporation, by its attorney, Leo Guzik; and Franklin R. Sears, Counsel for the General Counsel of the National Labor Relations Board, that the following questions and answers shall constitute the entire testimony of Mr. Wolf Plecher in the Hearing of the cases No. 39-CA-691, et al, and 39-CB-191, et al, said hearing being held in San Antonio, Texas:

Question: What office do you hold in the Bernhard-Altmann Texas Corporation?

Answer by Mr. Plecher: Vice President.

Question: Did you, on behalf of the Company sign a Memorandum Contract with the International Ladies Garment Workers Union on August 30, 1957, covering its employees at its San Antonio plant?

Answer by Mr. Plecher: Yes.

Question: Did the Union show you any authorization cards signed by employees of the San Antonio Plant of the Company before you executed the Memorandum Agreement on August 30, 1957?

Answer by Mr. Plecher: No.

Question: Did the Union offer to show you any authorization cards signed by employees of the Company at its San Antonio plant before you executed the contract?

[fol. 211]

Answer by Mr. Plecher: I do not recall.

Question: Did the Company, before it executed the contract on August 30, 1957, request the Union to exhibit to it the authorization cards signed by the employees of the San Antonio plant?

Answer by Mr. Plecher: No.

Question: Did the Union during the negotiations preceding the execution of the contract of August 30, 1957, make reference to cards signed by employees at the San Antonio plant?

Answer by Mr. Plecher: Yes.

Question: At the time of the signing of the contract of August 30, 1957, did you have in your possession in New York City the payroll of the employees of the San Antonio plant?

Answer by Mr. Plecher: No.

Question: Since August 30, 1957, have you checked the authorization cards of the Union against the payroll records of the employees of the Company at the San Antonio plant?

Answer by Mr. Plecher: No.

Question: Prior to the signing of the contract of August 30, 1957, did the Union's representative state to you that the Union had authorization cards signed by a majority of the employees in the unit at the San Antonio Plant?

[fol. 212]

Answer by Mr. Plecher: Yes.

Signed at.....this

.....day of ....., 1958.

.....

Charles Morris

Signed at New York this 2nd day of June, 1958.

/s/ Leo Guzik

.....

Leo Guzik

Signed at San Antonio, Texas, this 5th day of June, 1958.

/s/ Franklin R. Sears

.....

Franklin R. Sears

Signed at New York this 3rd day of June, 1958.

/s/ Wolf Plecher

.....

Wolf Plecher

[fol. 213]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT 10

NAME	DATE
Aguilera, Gloria Noriega	9/19/57
Aguirre, Pedro A.	2/ 1/57
Almarez, Juan	1/30/57
Almarez, Thomas P.	10/ 1/56
Alvarez, Adelina	2/12/57
Alvarez, Mary	8/22/57
Araujo, George C.	2/ 5/57
Arias, Cristobal	2/ 5/57
Arocha, Juan G.	12/ 8/56
Arrambide, Armando	7/31/57
Arrambide, Elena	9/23/57
Avina, Carmen L.	2/20/57
Ayala, Elida M.	8/ 7/57
Ayala, Jesus M.	10/ 1/56
Badillo, Mary	9/ 6/57
Baez, Emilio Jr.	2/ 5/57
Baez, Mary	10/17/56
Balderas, Martha	7/30/57
Balderas, Ramona O.	9/20/57
Banda, Oscar	2/21/57
Barboza, Antonio	1/10/57
Barrera, Enriqueta	8/26/57
Barrera, Margarito O.	2/ 5/57
Beltran, Paulita	10/ 1/57
Benitez, Jesse S.	1/10/57
Briseno, Cipriana	8/ 2/57
Bustamante, Irene F.	7/31/57
Bustamante, Fernando	10/ 9/56
Cadena, Theodora	9/25/57
Calderon, Abelardo E.	1/10/57
Cantu, Frances F.	2/17/57
Cantu, Jorge M.	10/ 9/56
Cantu, Manuela P.	8/21/57
Carrillo, Oralia	3/17/57

NAME	DATE
Castillo, Beatrice	9/26/57
Castillo, Guadalupe V.	9/27/57
[fol. 214]	
Castillo, Santos	9/24/57
Chapa, Adelina	2/ 7/57
Chatman, Lupe	8/21/57
Chavez, Alberto	10/ 2/56
Cisneres, Andrew B.	7/ 3/57
Contreras, Aurora	1/28/57
Contreras, Elvira M.	9/24/57
Contreras, Mike V.	1/17/57
Cuellar, Manuel	10/ 3/56
Davila, Rose M.	9/19/57
De Leon, Frank Q.	10/ 9/56
De Luna, Henry	10/ 8/56
De Luna, Pedro	10/ 2/56
Devera, Eugene	10/ 1/56
Diaz, Gregoria	11/16/56
Escamilla, Juan E.	7/ 3/57
Felan, Consuelo	2/17/57
Galindo, Vidal	2/ 1/57
Garcia, Antonia P.	9/27/57
Garcia, Felipe	11/ 2/56
Garcia, Hector G.	9/ 8/57
Garcia, Mary L.	9/24/57
Garcia, Nicolas	10/10/56
Garcia, Susie M.	10/11/56
Garza, Carlos G.	9/24/57
Garza, Cuca M.	9/24/57
Garza, Fernando	1/23/57
Gomez, Adelaide T.	2/19/57
Gomez, David Jr.	7/ 9/57
Gomez, Andrea Leos	9/24/57
Gomez, Pedro T.	9/24/57
Gonnet, Ernest George	9/26/57
Gonnet, Roger C.	9/24/57
Gonzales, Frances F.	9/24/57

NAME	DATE
Gonzales, Mary Z.	5/11/57
Gonzales, Nicolas	10/ 2/56
[fol. 215]	
Gonzalez, Ninfa A.	9/24/57
Gonzales, Paul F.	10/ 2/56
Gonzales, Salvador	10/ 9/56
Gonzales, Victoria A.	9/18/57
Guantes, Zoila M.	1/ 5/57
Guerra, Herminia	9/24/57
Guerrero, Antonio R.	1/ 8/57
Guerrero, Marina	2/ 6/57
Guillen, Aurelio B.	10/10/56
Hatala, Donald	9/20/57
Hernandez, Anita	12/13/56
Hernandez, Carlos B.	9/ 2/57
Hernandez, Frank R.	10/ 1/56
Hernandez, Hortencia	11/18/56
Hernandez, Irene A.	9/24/57
Hernandez, Jovita	3/ 1/57
Hernandez, Juanita	8/21/57
Hernandez, Lupe F.	8/ 8/57
Hernandez, Lupe Jimmie	9/30/56
Hernandez, Modesto M.	9/ 2/57
Hernandez, Ofelia V.	9/26/57
Herrera, Frances	10/15/56
Herrera, Polin	3/ 9/57
Huizar, Raul	1/ 9/57
Juarez, Jamie R.	10/ 9/56
Kelly, Consuelo P.	2/ 8/57
Longoria, Augustine D.	8/31/57
Longoria, Juan	10/ 3/56
Lopez, Paula R.	11/26/56
Lozano, Cirilda C.	8/ 8/57
Lucio, Mary M.	1/28/57
Lugo, Bernardo	10/ 1/56
Luna, Dionicio P.	10/ 2/56

NAME	DATE
Maldonado, Luisa	2/ 7/57
Mancillas, Angelina	8/15/57
Martinez, Domiga	9/24/57
[fol. 216]	
Martinez, Isabel R.	2/ 8/57
Martinez, Ignacio	9/30/56
Martinez, Johnny	10/30/56
Mata, Felipe	10/ 9/56
Medina, Cora	8/ 8/57
Medrano, Maria	3/13/57
Mejia, Mary Louise	3/11/57
Mendiola, Neil C.	9/17/57
Mercado, Isabel C.	9/27/57
Meza, Estella M.	2/ 7/57
Molina, Mary R.	9/23/57
Montoya, Josie	3/18/57
Morales, Bertha C.	8/20/57
Moran, Esperanza C.	9/20/57
Moreno, Francisco R.	9/26/57
Moreno, Julia B.	3/ 1/57
Muniz, Celia B.	9/24/57
Murillo, Petra	9/24/57
Ochoa, Manuel G.	10/ 9/56
Oliva, Ramona	11/26/56
Orozco, Antonio S.	3/21/57
Ortega, Mary C.	3/11/57
Ortiz, Antonio L.	11/22/56
Ortiz, Martin A.	9/13/57
Padilla, Juana G.	1/ 5/57
Pazuengo, Thayde	9/24/57
Prado, Juanita A.	10/15/56
Rabago, Paul C.	9/30/56
Ramirez, Alice V.	2/18/57
Ramirez, Concha	10/16/56
Ramon, Adelina F.	2/15/57
Rangel, Esther Y.	9/24/57
Reyes, Arnulfo G.	10/ 9/56
Reyes, Fred	10/ 3/56

NAME	DATE
Reyes, Janies	3/29/57
Reyes, Reynaldo V.	1/15/57
Rios, Hilario	10/30/56
[fol. 217]	
Rios, Susie G.	7/18/57
Rivera, Ernest	10/ 3/56
Rivera, Mary M.	8/20/57
Rodriguez, Alberto	9/30/56
Rodriguez, Angela	12/16/56
Rodriguez, Carmen	8/21/57
Rodriguez, Catalina (a/k/a Hernandez)	9/ 2/57
Rodriguez, Daniel	10/ 9/56
Rodriguez, Eugenia	8/22/57
Rodriguez, Feliz	11/19/56
Rodriguez, Henry G.	10/22/56
Rodriguez, Joe	10/ 1/56
Rodriguez, Pablo	9/26/57
Rodriguez, Romana	9/26/57
Rodriguez, Severo	9/30/56
Ramirez, Sira	9/12/57
Rodriguez, Virginia	2/19/57
Rojas, Guadalupe	9/30/56
Romo, Susie V.	8/22/57
Rossetti, Robert	2/18/57
Ruiz, Carrie P.	2/ 5/57
Ruiz, Frank	10/30/56
Ruiz, Herminia R.	11/22/56
Ruiz, Roy	11/22/56
Saenz, Rudolpho	10/ 1/56
Salinas, Jessie A.	9/24/57
Salinas, Mary L.	2/ 4/57
Sanchez, Mateo	12/13/56
Segura, Manuel Jr.	3/10/57
Sendejo, Mary Ann	7/ 6/57
Silva, Lidia	12/16/56
Silva, Guadalupe	8/17/57
Soliz, Romana	9/23/57
Suniga, Elvira P.	3/ 5/57

NAME		DATE
Tejeda, Mary Helen		4/16/57
Tobar, Adella (Tober)		2/18/57
Trevino, Cresencia		8/ 9/57
Trevino, Herminia O.		3/21/57
[fol. 218]		
Valdez, Eloisa R.		10/15/56
Vargas, Martin F.		3/18/57
Vargas, Robert I.		11/22/56
Vasquez, Arthur		10/ 1/56
Vasquez, Mary E.		8/ 2/57
Vega, Lilly		4/16/57
Vera, Herlinda F.		9/25/57
Vera, Ramon		1/26/57
Vidaurri, Joe R.		10/ 9/56
Villa, Cecelia		11/ 8/56
Villa, Oscar R.		7/ 3/57
Villa, Raul		10/ 9/56
Villarreal, Felipa R.		9/24/57
Villarreal, Guillerma		8/ 6/57
Villegas, Rudy M.		10/ 9/56
Voges, Willie R.		2/12/57
Zuniga, Bertha E.		4/27/57
*Zuniga, Mariano		11/ 3/56
Chavez, Mary L.		8/23/57
Gonzalez, Raul M.		9/24/57
Hernandez, Ruth B.		8/ 6/57
Ortiz, Elia G.		9/24/57
Reyes, Dora		8/20/57
Reyna, Concepcion F.		7/22/57
Molina, Stella S.		10/ 7/57
Molina, Linda S.		10/ 7/57
Segovia, Florentino G.		9/24/57
Guadalupe Balderma	s/8/8/57 ret at her req on	9/24/57

(Original of this exhibit contains 28 additional names which have been completely crossed out.)

[fol. 219] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15038

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 15079

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BERNHARD-ALTMANN TEXAS CORPORATION, Respondent.

On Petition to Review and Set Aside, and on Petition for Enforcement of, an Order of the National Labor Relations Board

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OPINION—Decided May 19, 1960

Mr. Charles J. Morris, of the bar of the Supreme Court of Texas, *pro hac vice*, by special leave of Court, with whom Messrs. Morris P. Glushien and L. N. D. Wells, Jr., were on the brief, for petitioner in No. 15038.

Mr. Frederick U. Reel, Attorney, National Labor Relations Board, with whom Messrs. Thomas J. McDermott, Associate General Counsel, National Labor Relations Board, Marcel Mallet-Prevost, Assistant General Counsel, [fol. 220] National Labor Relations Board, and Herman M. Levy, Attorney, National Labor Relations Board, were on the brief, for respondent in No. 15038 and petitioner in No. 15079.

Mr. Wallace M. Cohen entered an appearance for respondent in No. 15079.

Before Mr. Justice Burton, retired,* and Wilbur K. Miller and Fahy, Circuit Judges.

Mr. Justice Burton: These cases present the question whether it was an unfair labor practice, under §§ 8 (a)(1) and (2) and 8 (b)(1)(A) of the National Labor Relations Act, as amended in 1947,[1] for an employer and a union to enter into a collective-bargaining agreement recognizing the union as the exclusive bargaining representative of all of the employees in the proposed bargaining unit, although the union had not been authorized to act as their collective-bargaining representative by a majority of the employees. For the reasons hereafter stated, we are of [fol. 221] the opinion that such an agreement unlawfully restrained nonparticipating employees from their free exercise of the rights of self-organization guaranteed to them by § 7 of the Act[2] and also gave unlawful support to the

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* Sitting by designation pursuant to 28 U.S.C. § 294 (a).

[1] "SEC. 8 (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . .

. . . . . .

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . ." 61 Stat. 140, 141, 29 U.S.C. § 159 (a)(1) and (2), and (b)(1)(A).

[2] "SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a)(3)." 61 Stat. 140, 29 U.S.C. § 157.

participating union. We therefore agree with the National Labor Relations Board's decision that such conduct in the cases before us was an unfair labor practice which the Board properly ordered discontinued.

The General Counsel for the National Labor Relations Board filed a complaint against the Bernhard-Altmann Texas Corporation, an employer, manufacturing knitwear for interstate commerce at San Antonio, Texas. The complaint charged the employer with entering into an exclusive recognition agreement with the International Ladies' Garment Workers' Union, AFL-CIO, at a time when the union did not represent a majority of the corporation's employees in any appropriate bargaining unit. It also charged the employer with thus contributing to the support of the union in violation of § 8 (a)(2), and with interfering with the free exercise of rights, guaranteed to the employees by § 7 of such Act, in violation of § 8 (a)(1). In a separate complaint the General Counsel also charged that the union had violated § 8 (b)(1)(A) by entering into the above-mentioned agreement with the employer and thus restraining and coercing some of the latter's employees in the free exercise of rights guaranteed to them by § 7. After a hearing in which the cases were consolidated, the trial [fol. 222] examiner issued an intermediate report recommending that each complaint be dismissed in its entirety. However, the Board, on exceptions filed by the General Counsel, disagreed with the trial examiner's conclusions. The Board found that the employer and the union had respectively engaged in the alleged unfair labor practices. It accordingly ordered each of them to cease and desist from such practices and to hold a representative election. One member concurred in part and dissented in part. 122 N.L.R.B. 1289, 1297. The union now asks this Court to set aside the Board's order, whereas the Board asks that its order be enforced. Except for filing its answer, the employer has not participated in these proceedings.

The facts found by the Board are supported by substantial evidence on the record considered as a whole and are conclusive here. 61 Stat. 148, 29 U.S.C. § 160(e). Our jurisdiction is not questioned.

Beginning in 1956, the union engaged in a campaign to organize the employer's plant. It obtained a substantial number of authorization cards signed by employees designating the union as their bargaining representative. In July 1957, a number of the employees struck in protest against a wage reduction and the union, on behalf of some of the strikers, endeavored to settle the controversy. On August 30, 1957, during these negotiations, a "memorandum of understanding" was signed by the employer and the union. In that memorandum the employer expressly recognized the union as the exclusive bargaining agent for its production and shipping employees, and the union stated that it had been designated by a majority of such production and shipping employees to act as the exclusive bargaining representative of all of such employees. There was testimony that the union maintained a running check of the number of authorization cards it held against a list of the employees believed by it to be working in the bargaining unit. When the union's Regional Director be- [fol. 223] came convinced that the union had obtained cards from a majority of the workers in the unit, he so stated to the employer. The latter made no independent check of the cards and took no other steps to investigate the assertion. Likewise, there is no evidence that at the time of concluding the agreement the union attempted to obtain a definitive list of the employees within the proposed bargaining unit.

In October 1957, the memorandum was followed by a formal collective-bargaining agreement. This covered many subjects appropriate for such a contract and recited that a majority of the employees in the bargaining unit had designated the union as their exclusive bargaining representative. The Board found that, on the critical date of August 30, the union had not been designated as a bargaining agent, either by the votes or by the signed cards of a majority of the employees in an appropriate bargaining unit. The union disputes the Board's finding of lack of majority status on August 30. While there were questions raised as to the status of some employees, the Board was justified in the finding that the union did not represent a

majority of the employees in the designated unit on the critical date.[3]

The intent of the National Labor Relations Act, as amended, and especially of § 7, is that the decision whether or not to be represented by a bargaining representative and also the choice of that representative shall be the un- [fol. 224] coerced decision of a majority of the employees in an appropriate unit. Obstruction of that freedom of choice, by either the employer or the union, deprives some of the employees of this guaranteed right and is an unfair labor practice under § 8. It is difficult to conceive of a clearer restraint on the employees' right of self-organization than for their employer to enter into a collective-bargaining agreement with a minority of the employees. If upheld, that action would foreclose any other choice of a bargaining representative by a majority of the workers in the unit. It would not only impose the minority's bargaining agent upon the nonparticipating majority, it would also practically preclude the majority, during the term of the contract, from casting off the union as bargaining representative. Even if the employees might surmount the difficulties inherent in challenging the established order by presenting a petition for decertification under § 9 (c),[4] it is quite likely,

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[3] The union contends that although the August 30 memorandum may be invalid, the formal contract executed in October when the union had achieved majority status is valid. The fact that, by October, the union may have achieved a majority status during the period that it maintained an unlawful agreement is irrelevant. *Local Lodge 1424* v. *N.L.R.B.*, 362 U.S. 411, 414, *reversing on other grounds* 105 App. D.C. 102, 107, 264 F. 2d 575, 580 (1959). See *Franks Bros. Co.* v. *N.L.R.B.*, 321 U.S. 702, 703-705 (1944), and *Joy Silk Mills, Inc.* v. *N.L.R.B.*, 87 U.S. App. D.C. 360, 372, 185 F. 2d 732, 744 (1950), cert. den., 341 U.S. 914 (1951).

[4] See *N.L.R.B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 267 (1938). "It [Congress in passing the NLRA] had before it the *Railway Clerks* case which had emphasized the importance of union recognition in securing collective bargaining . . . and there were then available data showing that once an employer has conferred recognition on a particular organization it has a marked advantage over any other in securing the adherence of the employees, and hence in preventing the recognition of any other."

under the Board's decisions, that the "contract-bar" rule would prevent the majority from asserting the union's lack of majority status during the two-year term of the contract. It has been held repeatedly by the Board that in a decertification proceeding, where the contract bar has been asserted, the petitioners are not permitted to show the lack of majority status of the union at the time the contract was made.[5]

[fol. 225] It has been repeatedly found an unfair labor practice under § 8(a)(1) and (2) for an employer to conclude a collective-bargaining agreement with a minority union.[6] In most of these cases there were aggravating factors such as the presence of a rival union or the imposition of a union security provision, but those cases do not appear to turn on the presence of these aggravating factors, nor are these factors always present. We see no material distinction from the viewpoint of the employees' § 7 organizational rights between the rival union situation, where there is interference in the choice between bargaining agents, and the instant cases, where the interference affects the choice whether to bargain through a collective representative or individually.

As early as *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 44-45 (1937), it has been recognized that im-

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[5] See *In re Columbia River Salmon & Tuna Packers Assn.*, 91 N.L.R.B. 1424 (1950); *In re Electro Metallurgical Co.*, 72 N.L.R.B. 1396 (1947); *Sport Girl Co.*, 26 LRR Man. 1284 (1950); *In re Wilmington Terminal Warehouse Co.*, 68 N.L.R.B. 299, 302 (1946).

[6] See *e.g.*, *Dixie Bedding Mfg. Co.* v. *N.L.R.B.*, 268 F. 2d 901, 905 (C.A. 5th Cir. 1959); *District 50, United Mine Workers* v. *N.L.R.B.*, 234 F. 2d 565, 569 (C.A. 4th Cir. 1956); *N.L.R.B.* v. *National Container Corp.*, 211 F. 2d 525, 536 (C.A. 2d Cir. 1954); *N.L.R.B.* v. *Gottfried Baking Co.*, 210 F. 2d 772, 782 (C.A. 2d Cir. 1954); *Elastic Stop Nut Corp.* v. *N.L.R.B.*, 142 F. 2d 371, 379-380 (C.A. 8th Cir. 1944), cert. den., 323 U.S. 722; *United Transports, Inc.*, CCH Lab. Law Rep. (4th ed. 1959) ¶ 56,192 (123 N.L.R.B. No. 60); *Grand Union Co.*, 122 N.L.R.B. 589; *Coast Aluminum Co.*, 120 N.L.R.B. 1326 (1958); *R. B. Wyatt Mfg. Co.*, 117 N.L.R.B. 700 (1957), aff'd *sub nom. N.L.R.B.* v. *Steel, Metals, Alloys, Local 810*, 253 F. 2d 832 (C.A. 2d Cir. 1958); *International Metal Products Co.*, 104 N.L.R.B. 1076, 1077 (1953); *John B. Shriver Co.*, 103 N.L.R.B. 23 (1953); *In re Ken-Rad Tube & Lamp Corp.*, 62 N.L.R.B. 21 (1945).

plicit in the duty of the employer to recognize the majority's representative of his employees as the exclusive bargaining representative is the correlative duty to deal with no agent other than that chosen by the majority. [fol. 226] Also implicit is the obligation on the part of the employer to make sure that the representative does in fact represent a majority of the employees. Conversely, it is the duty of those who seek to establish themselves as exclusive bargaining agents to make sure that they have the mandate of those in whose name they speak.

Section 8 (b)(1)(A), as enacted in 1947, prohibits unions from invading the rights of employees under § 7 in a fashion comparable to the activities of employers prohibited under § 8 (a)(1). That the provisions were intended to be parallel is indicated by the similarity of the language employed, and is confirmed by the legislative history of the provisions.[8]

Section 8 (a)(1), as it appeared in the original Wagner Act as § 8 (1), applied only to employer conduct. The major purpose which the sponsors of the 1947 amendments sought to achieve was to impose on unions the same restrictions as those imposed by § 8 (1) on employers respecting intrusion on protected employee activity. The omission of the word "interference" from subsection (b)(1) may not be devoid of significance when considering whether labor organizations are permitted wider latitude in peacefully persuading employees to organize than is

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[7] See *North Electric Mfg. Co.* v. *N.L.R.B.*, 123 F. 2d 887, 889-890 (C.A. 6th Cir. 1941), cert. den., 315 U.S. 818 (1942); *Texarkana Bus Co.* v. *N.L.R.B.*, 119 F. 2d 480, 484 (C.A. 8th Cir. 1941); *N.L.R.B.* v. *Union Pacific Stages, Inc.*, 99 F.2d 153, 159 (C.A. 9th Cir. 1938); S. Rep. No. 573, 74th Cong., 1st Sess. 13 (1935).

[8] For expressions of intent that the two provisions establish comparable standards for employer and union conduct to those established for employer conduct by § 8 (1) see *e.g.*, the views of Senators Taft, Ball, Donnell and Jenner, S. Rep. No. 105, 80th Cong., 1st Sess. 50 (1947); statement of Senator Ball upon introducing § 8 (b)(1)(A) as an amendment, 93 Cong. Rec. 4016, and Senator Ball's further statements during debate, *id.*, at 4432-4433; Senator Taft in debate, *id.*, at 4025, 4436; remarks of Senator Smith, *id.*, at 4435.

permitted employers in opposing collective bargaining. [fol. 227] But where union activities go beyond the level of persuasion and amount to a foreclosure of the exercise of § 7 rights by the employees, we find no basis for holding that the provisions should have a different meaning when applied to a labor organization than when applied to an employer.

This Court's decision in *Drivers, Chauffeurs, Helpers, Local Union No. 639 (Curtis Bros.)* v. *N.L.R.B.*, —— U.S. App. D.C. ——, —— F.2d ——, decided November 26, 1958, and the Supreme Court's affirmance of that decision, 362 U.S. 274, do not militate against enforcement of the Board's order in the instant cases.[9] In the *Curtis Bros.* case a minority union was engaged in peaceful picketing in an effort to secure the recognition of a union which recently had been defeated in a certification election. This Court held that such picketing was not an unfair labor practice. The instant cases involve much more direct interference and restraint of § 7 rights than did the *Curtis Bros.* case. In the instant cases the recognition of the minority union is a *fait accompli* depriving the majority of the employees of their guaranteed right to choose their own representative. In the *Curtis Bros.* case the issue was not whether the recognition of the minority union as the exclusive bargaining representative was a violation of the statute. It was only whether the preliminary picketing seeking to gain members and recognition was a violation of § 8(b)(1)(A).

The instant cases do not involve picketing and do not involve either the right of free expression or the right to strike which are protected by § 13 of the Act.[10] *Teamsters* [fol. 228] *Union* v. *Vogt, Inc.*, 354 U.S. 284 (1957); *Thornhill* v. *Alabama*, 310 U.S. 88 (1940). The practices involved here, unlike recognitional and organizational picketing, are not specifically limited in the other unfair labor practice provisions of § 8.

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[9] Since its decision in *Curtis Bros.* the Supreme Court has assumed in *Local Lodge 1424* v. *N.L.R.B.*, 362 U.S. 411, that the conclusion of a collective-bargaining agreement by a minority union may be an unfair labor practice. See *id.*, at 414 and dissenting opinions at 429, 433.

[10] 61 Stat. 151.

An employer need not bargain with an uncertified representative if he has grounds in good faith for doubting the union's majority status,[11] but he is under a duty to bargain if he has adequate grounds for believing that the union does represent a majority.[12] It is difficult to establish ground for believing or disbelieving the existence of a majority status for a union in the face of a failure to take any steps to determine that status.[13]

The central consideration here is not merely whether the employer or the union entertained a bona fide belief that the union had majority support, but whether that belief was arrived at through an adequate effort to determine the true facts of the situation.

Questions may arise as to the membership of particular employees in the bargaining unit or the validity of the [fol. 229] union authorizations. In most of these situations clear and convincing proof of the employees' status will be readily available to the parties in the form of personnel records and other direct proof of employment status. If informal methods are not available, or they do not prove dispositive, § 9 (c) provides a formal method for an authoritative Board determination of majority representative status.

Organizational efforts will not generally turn on such thin majorities as to require a complex computation of majority status. In such a case, simple procedures are available to demonstrate majority status. It is only when

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[11] *Mount Hope Finishing Co.* v. *N.L.R.B.*, 211 F. 2d 365, 373 (C.A. 4th Cir. 1954); *A. L. Gilbert Co.*, 110 N.L.R.B. 2067 (1954); Administrative Decisions of the General Counsel, 5 CCH Lab. Law Rep. ¶¶ 56,470, 56,537, 56,548 (1959). The rule is otherwise where a labor organization has recently been certified by the National Labor Relations Board. *Brooks* v. *N.L.R.B.*, 348 U.S. 96 (1954).

[12] *Joy Silk Mills, Inc.* v. *N.L.R.B.*, 87 U.S. App. D.C. 360, 369, 185 F. 2d 732, 741 (1950), cert. den., 341 U.S. 914 (1951).

[13] Failure to investigate a union's majority claim and bargain if it is substantiated is an unfair labor practice. *N.L.R.B.* v. *Inter-City Adv. Co.*, 190 F. 2d 420 (C.A. 4th Cir. 1951), cert. den., 342 U.S. 908 (1952); *N.L.R.B.* v. *Crown Can Co.*, 138 F. 2d 263 (C.A. 8th Cir. 1943), cert. den., 321 U.S. 769 (1944); *In re Metal Textile Corp. of Delaware*, 47 N.L.R.B. 743, 753 (1943).

the question is close that more is required. If the parties' determination of majority status is questionable, the burden is on the General Counsel to establish the alleged unfair practice and lack of majority status.

The net effect of the Board's policy is to require that labor organizations and employers refrain from recognizing by agreement a sole bargaining representative until such time as they have adequately established that such agent represents a majority of the employees in the bargaining unit. Allowing the union or the employer to do otherwise would permit them, by agreement, to undermine the employees' rights under § 7.

Accordingly, the union's petition to set aside the order is denied and the Board's order shall be enforced in full.

FAHY, Circuit Judge, dissenting: The doubts which surrounded the problem presented by this case have been resolved, as it seems to me, by the necessary implications of the recent decisions of the Supreme Court in *NLRB* v. *Drivers, Chauffeurs, Helpers, Local 639*, 362 U.S. 274, referred to as the *Curtis* case, and *United Rubber Workers* v. *NLRB*, 362 U.S. 329. The Court held in these cases that peaceful picketing, or a peaceful strike, by a union which [fol. 230] did not represent a majority of the employees, to obtain immediate recognition as the exclusive bargaining agent in *Curtis*, or to obtain a contract in *United Rubber Workers*, was not an unfair labor practice under section 8(b)(1)(A) of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. §§ 141-66 (1958). The subject was exhaustively considered in *Curtis*. In the absence of an objective explicitly condemned by the Act, such as appears in section 8(b)(4), peaceful economic measures were held not to constitute such restraint or coercion of employees in the exercise of their rights guaranteed by section 7 as to constitute unfair labor practices within the meaning of section 8(b)(1)(A). From this it seems to me to follow that the obtaining of such recognition by peaceful economic measures, unaccompanied by any unlawful contractual provision, is not an unfair labor practice on the part of the union under section 8(b)(1)(A). Insofar, therefore, as the

Board order rests upon recognition thus accorded I think it is not supported.

I believe it also follows that the employer on his part does not violate section 8(a)(1) or section 8(a)(2) by according such recognition or entering into such an agreement. There was no rival union competing for recognition. Moreover, the employer was not interfering with the freedom of the employees by conferring exclusive recognition in furtherance of the employer's own preference for or desire to assist one union over another. Nor was the contract one for a union shop, see *Local Lodge No. 1424* v. *NLRB*, —— U.S. ——, (28 U.S. L. Week 4274, April 26, 1960), or claimed to be unlawful except that it accorded exclusive recognition to the union.[1] The strike was a peaceful one by the only union seeking recognition and bargaining status. The union lawfully obtained the settlement. It would frustrate the [fol. 231] union's right so to do were it to be held that the employer, in agreeing to such a settlement, engaged on its part in an unfair labor practice which invalidated the settlement reached. Moreover, it seems to me that the contrary position requires an employer to suffer the consequences of a lawful strike without being able lawfully to bring it to an agreed end unless and until the union gains the adherence of a majority of the employees.

My position does not mean that the recognition in the form given is protected should a majority of the employees at any time repudiate the union or choose another bargaining agent. On the contrary, any existing "contract bar" policy or regulation of the Board is I think inapplicable to such a contract with a minority union, though made in such circumstances as are presented by this case.

I would set aside the order of the Board.

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[1] The Board decision does not rest to any extent upon any other provision in the contract. I treat the case on the same basis.

[fol. 232] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,038

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 15,079

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BERNHARD-ALTMANN TEXAS CORPORATION, Respondent.

On Petition to Review and Set Aside, and on Petition for Enforcement of, an Order of the National Labor Relations Board.

Before: Mr. Justice Burton, retired, and Wilbur K. Miller and Fahy, Circuit Judges.

JUDGMENT—May 19, 1960

These cases came on to be heard on the record from the National Labor Relations Board, and were argued by counsel.

On Consideration Whereof, it is ordered by this court that the petition of International Ladies' Garment Workers' Union to set aside the order of the National Labor Relations Board is denied; and the order of the National Labor Relations Board will be enforced in full.

Pursuant to Rule 38(1), the National Labor Relations Board shall within 10 days hereof serve and file a proposed

enforcement decree consistent with the opinion and judgment of this court.

Per Mr. Justice Burton.

Dated: May 19, 1960.

Separate dissenting opinion by Circuit Judge Fahy.

[fol. 233] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 234]

SUPREME COURT OF THE UNITED STATES

No. 284, October Term, 1960

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

ORDER ALLOWING CERTIORARI—October 10, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.